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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1138th MEETING

Held at Headquarters, New York,
on Friday, 3 April 1992, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Colombia (continued) (CCPR/C/64/Add.3)

1. At the invitation of the Chairman, Mr. Cepeda and Mr. Melo (Colombia) took places at the Committee table.

2. The CHAIRMAN invited the representatives of Colombia to resume their replies to questions raised by members of the Committee on sections II and III of the list of issues.

3. Mr. MELO (Colombia) said that a question had been raised regarding the role of the mechanisms set up by the Colombian Government to protect human rights, referred to in paragraph 88 of the report. The Office of the Presidential Adviser for National Defence and Security formulated policies to reduce violence and control the number of homicides caused by guerrillas, drug trafficking and delinquency. It also developed policies to improve the training and qualifications of the police force and to ensure that it performed its functions in a lawful manner. The Office had prepared a national strategy to combat violence.

4. The Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights received complaints and reports of human rights violations and carried out follow-up work on investigations conducted by other institutions. It had a computerized list of documents containing 5,000 complaints of human rights violations. The Office also took part in courses given by the police and armed forces on human rights and international humanitarian law.

5. The Office of the Presidential Adviser for Young People, Women and the Family dealt with social programmes to reduce violence against young people, children and women.

6. The Office of the Presidential Adviser for Rehabilitiation, Normalization and Reconciliation formulated policies whose aim was to achieve a negotiated peace with guerrilla groups. It also followed cases of abduction, summary execution and other acts carried out by guerrillas.

7. The Office of the Attorney-General of the Nation conducted investigations and punished members of the police or armed forces who had been found guilty of homicide, mass murder, disappearances or torture. The Office was a civilian body independent of the executive branch of government. It had access to all military archives and premises, and it appointed a special agent to take part in trials of members of the army or police conducted by military penal courts in order to ensure that the judge acted in a prompt and impartial

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manner. In such trials, it had the right to request evidence from the judge and the power to take punitive action against members of the judicial police who did not obey the law or obstructed prompt and impartial investigations.

8. The Office of Public Defender (Defensor del Pueblo) was a new institution established by the Constitution. The Public Defender was appointed by the Congress for a period of four years and was irremovable. He instituted proceedings of habeas corpus and took action on behalf of individuals to protect their human rights. The Public Defender was also involved in so-called "popular actions" to defend collective interests, such as the environment. He received reports of human rights violations and initiated the respective criminal investigations, and ensured the defence of individuals who could not afford counsel.

9. Investigations against members of the police or armed forces accused of extrajudicial executions, homicide, torture or mass murder were carried out by examining magistrates from civilian or military courts. In all cases, the judges were civilians. However, some judges were attached to ordinary courts while others were assigned to military penal courts. If an ordinary court had convincing evidence that the case involved an alleged violation committed by a member of the armed forces in the course of a collective military operation, the case was transferred to the military penal court. Sentences handed down by the military penal court could be reviewed by the Higher Military Court. Military courts were subject to the Office of the Attorney-General of the Nation and the Supreme Court of Justice.

10. Under the new Constitution, military penal courts had been maintained to deal with acts committed by members of the armed forces in the line of duty. Such courts were required to be independent, public and impartial.

11. Between 1 January 1988 and 31 June 1989, out of 27 decisions in cases involving police officers accused of homicide, 13 officers had been sentenced and 14 had been acquitted. During the same period, there had been 17 decisions in cases involving army officers accused of torture; 6 officers had been sentenced and 11 acquitted. There had also been 79 cases involving non-commissioned officers accused of homicide, of whom 49 had received sentences. In 392 cases involving members of the armed forces of lesser rank, 298 had been sentenced. During the same time period, 44 non-commissioned officers and 234 constables of the police force had been accused of torture. Currently, at least 16 members of the police or armed forces were awaiting trial for extrajudicial executions, and at least 12 members of the police force were awaiting trial for alleged execution of common criminals.

12. Over the past 10 years or so, the various measures that had been taken to reduce and prevent mass murder, politically motivated murders and torture had yielded positive results. Between 1990 and 1991, reports of torture had declined by 80 per cent; reports of disappearances had decreased from 230 to 74 during the same period; reports of mass murders by paramilitary forces had

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also decreased. While fighting between paramilitary groups and guerrillas had decreased, there were still incidents of individual murders in remote areas of the country.

13. With respect to politically motivated murders, he noted that the elections to the National Constituent Assembly held in 1991 and the gubernatorial and mayoral elections held a month earlier, had not been accompanied by general acts of violence and intimidation against political groups linked to the guerrillas, as had been the case in previous years. The Communist Party, the Movimiento 19 de Abril (M-19) and the People's Liberation Army had participated openly in the elections and had won seats in many parts of the country. The group that had been most affected by violence in the past four or six months had been the former People's Liberation Army, at least 15 members of which had been assassinated in rural areas. According to reports from leaders of the movement and the results of several investigations, the assassinations had been committed by members of the current national guerrilla coordinating body, which was trying to sabotage or obstruct the peace process. In addition, a number of members of traditional parties linked to the Government, including several liberal and conservative candidates, had been assassinated by guerrillas on the eve of the elections.

14. With regard to the question regarding "internal displaced persons", he noted that, over the past 40 years, Colombia had been caught up in a process of rapid urbanization. There had been a large influx of peasants to the cities for economic and political reasons. In the 1970s, the annual rate of population growth of some cities had been as high as 6 per cent; that rate had currently fallen to 2.5 per cent. However, there had been a recent increase in the population of such cities as Villavicencio, Barranca Bermeja and Montería, as a result of an influx of peasants fleeing from violence and guerrilla warfare in rural areas.

15. Economic activities in rural areas had declined sharply; landowners were abducted by the guerrillas or forced to make routine payments to them. Livestock herds in areas of guerrilla activity had decreased by more than 10 per cent in the past years. The mining of rural roads by the guerrillas had led to the deaths of a number of peasants and to the mutilation of at least 10 persons. Attacks on transport vehicles and public facilities had led to many civilian deaths.

16. Although military operations were conducted in accordance with article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to which Colombia was a party, they had on rare occasions resulted in civilian deaths. In 1990, two civilian deaths had been attributed to military operations and seven people had allegedly been victims of extrajudicial executions by the army.

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17. The emigration of peasants from rural areas to the cities had given rise to a very serious social and economic situation, and it was not always easy to distinguish those who had emigrated for economic reasons from those who had fled rural areas for security reasons. The Government was endeavouring to provide basic services to neighbourhoods in which such populations were concentrated.

18. The Government had taken specific action, on an experimental basis, to provide assistance to groups that had fled to the cities for political reasons. Thus, at the beginning of 1989, the Government had submitted to the European Community a project proposal for the provision of comprehensive assistance to three cities with high concentrations of refugees from violence in rural areas. Since the proposed project had not yet been approved, the Government, through the Foundation for Assistance to the Family Members of Victims of Violence, had formulated a number of projects that provided emergency assistance to people who had recently moved to cities. Much of that assistance had been made available by non-governmental organizations (NGOs), which cooperated with the Government on a contractual basis or received subsidies from it. The Office of the Human Rights Adviser in Medellín had set up a project to provide housing to widows of persons assassinated for political reasons.

19. In order to expand those projects, the Government had recently established the Office of the Presidential Adviser for Social Policy, which was involved in the direct implementation of projects and programmes. The Office provided assistance to family members of victims of violence and gave support through temporary assistance programmes which included occupational training, the provision of credits and the financing of productive activities and projects. Currently, economic support had been provided for the training of 3,000 for new members of guerrilla groups.

20. Finally, the Government's National Rehabilitation Plan carried out social investment projects in rural areas affected by violence. The projects were discussed and approved at mass community meetings without the involvement of the political authorities or the central government. The mass community meetings had also been given legal power to discuss and make proposals on human rights violations in their localities. Such meetings were held in the presence of both military and civilian authorities who often received complaints and accusations from the entire community concerning alleged or real violations of human rights.

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Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, and right to participate in the conduct of public affairs (arts. 12, 13, 17, 18, 19, 20, 21, 22 and 25) (sect. IV of the list of issues)

21. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of Colombia, namely: (a) clarification of the circumstances under which restricted residence could be ordered and the situation under the new Constitution; (b) further information concerning the law and practice under the previous Constitution relating to permissible interference with the right to privacy, and any changes in that respect under the new Constitution; (c) Colombian laws and practices relating to the collection and use of personal data, and the protection of privacy in that regard; (d) information on the privileged treatment, if any, of the Roman Catholic Church as compared with other churches or religious groups; and (e) information on whether any popular referendum as envisaged in article 6 of Legislative Act No. 1 of 1986 had ever been organized and, if so, on what subjects.

22. Mr. CEPEDA (Colombia) said that the system of restricted residence that had operated under the previous Constitution had been abolished.

23. In the area of the right to privacy, the new Constitution represented considerable progress. The new Constitution not only guaranteed the right to privacy but also sought to adapt that concept to modern technological developments that frequently threatened privacy. Under the previous Constitution, the competent authorities could order the interception or recording of private communications, which had led to abuses. Under the new Constitution, only a judge could order wire-tapping or the opening of private correspondence. Moreover, various writs for the protection of human rights had been issued, including a number of writs concerning the right to privacy.

24. Article 15 of the new Constitution dealt specifically with the collection and use of personal data. It gave individuals the right to have access to computerized data and to request the removal of inaccurate data or information that violated the right to privacy. The right of an individual to such information applied to both public and private databases. Special writs had already been used in such cases. Moreover, the Office of the Attorney-General was planning to introduce a bill developing the so-called right of "habeas data", and the Government was cooperating with interested groups which supported that bill.

25. Turning to section IV (d), he said that one of the major changes brought about by the new Constitution was the granting of full religious freedom. All churches and sects were now equal before the law, and religious minorities enjoyed special protection. The concordat between the Government of Colombia and the Holy See granting the Roman Catholic Church a special status was being modified to bring it into line with the new Constitution. The Roman Catholic Church retained significant influence in matters concerning the family,

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however. Previously, Roman Catholic marriages were the only religious marriages considered to have civil effect, but under the new Constitution, all religious marriages were recognized civilly. Another sensitive matter was religious education in the public schools. Such classes were now optional, and the decision was left to parents belonging to religious minorities as to whether their children would receive instruction. A few incidents of discrimination in that area had been reported and were under review by the Constitutional Commission.

26. With regard to section IV (e), one of the major changes recently taking place had to do with popular participation. In Colombia there was no tradition of direct participation in decision-making. While the old Constitution had limited it only to municipal consultations, the new Constitution encouraged such participation at all levels. In practice, only a few public hearings had actually been held, mostly concerning public works and urban development projects at the municipal level. However, the process of drafting the new Constitution had stimulated popular interest in and enthusiasm for the decision-making process at all levels. Two direct national referendums had been held, the first to decide whether a Constitutional Assembly should be held, and the second to decide on the membership, powers and procedures of the Constitutional Assembly. The new Constitution provided for extensive direct participation.

27. Mr. FODOR said that his questions related to section IV (c) on the right to privacy. Though privacy was generally respected in urban centres, he wondered whether it was respected to the same degree in remote areas. He would like to know what legal restrictions existed, if any, on the conditions under which a competent official could grant an order for wire-tapping or interception of correspondence.

28. He would welcome further information on the implementation of article 176 of the Constitution regarding the special district.

29. Mr. ANDO said that his concerns related to the right to freedom of expression and freedom of association as provided for in articles 19 and 22 of the Covenant. He understood that the Government was attempting to comply with the Covenant, but that social and economic difficulties had still resulted in some politically motivated killings. While the law permitted a large degree of freedom of expression and association, he wondered whether there were de facto limits on those freedoms because of the activities of guerrilla groups and drug traffickers.

30. Mr. EL-SHAFEI said that, with reference to article 22 of the Covenant, deep concern had been expressed over the violent deaths and disappearances of many trade unionists. Additional information would be welcome on required regulation of trade associations, guarantees of the right of collective bargaining and measures available for redress of violations, government action on alleged violations of the right to collective bargaining, the Government's response to reported killings and disappearances of trade unionists, and steps taken to punish the responsible parties.

31. Mr. WENNERGREN said that paragraph 168 of the report explained that all radio and television channels were State property, and that the National Television Council had prohibited messages or programmes undermining respect for the legitimate authorities. That seemed to him a form of self-imposed censorship. It would be interesting to learn how required respect for authority was applied to opinions critical of the Government expressed in news or political broadcasts. There was a danger that that provision could be used to suppress opposing opinions. More details on how that provision was applied in practice would be welcome.

32. As mentioned in paragraph 167 of the report, the National Police Code stipulated that no film could be shown to the public without prior authorization by the Film Classification Committee. The requirements for authorization and the grounds on which public exhibition could be prohibited should be indicated.

33. Mrs. HIGGINS said that her concerns related to the state of emergency bill introduced in January 1992 and how it might affect certain aspects of freedom of movement, as guaranteed by article 12 of the Covenant. If that bill had passed into law, its relation to constitutional provisions should be clarified. She inquired whether the obligatory safe-conduct passes in some areas of the country were viewed as necessary restrictions on freedom of movement under article 12, paragraph 3, of the Covenant. If so, she wondered why it had been called a state of emergency bill. The position on freedom of movement for journalists and human rights monitors should also be explained.

34. Mr. DIMITRIJEVIĆ, referring to section IV (d) of the list of issues and article 18 of the Covenant, said that he would like to hear more about the powers of the State body responsible for registering marriages contracted in the Roman Catholic and other churches, since some of those marriages might not be considered morally acceptable according to majority views. With regard to freedom of choice in religious education, he would like to know if, in addition to the Roman Catholic religious instruction offered in the public schools, an alternative choice existed, such as a general course in world religions and ethics. He would also be interested to learn the nature of the case currently being decided by the Constitutional Court.

35. Mr. CEPEDA (Colombia), in answer to Mr. Dimitrijević, said that registration of marriages was a purely formal act of civil record-keeping and was not concerned with whether a marriage was in conformity with religious rules. Undoubtedly, reaction against members of minority religious communities attempting to exercise their freedom to contract a marriage according to their tradition was possible, but remedies were available under law for discrimination by the authorities, and a law to preserve respect for minority religious practices was being drafted which would provide legal recourse, as well.

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36. Regarding religious education, the public schools provided instruction in the majority religion, but alternate courses in ethics must also be made available. No student could be barred from admission to a public school on religious grounds. Courses in general ethics were taught by persons from traditions outside Roman Catholicism, and many public school teachers were members of an association promoting pluralism. A parent's wish to have his or her child excused from religious education entirely must also be respected, even if the parent was Roman Catholic. One case of religious discrimination against a public school student was now pending review in the Constitutional Court.

37. Mr. Wennergren had inquired about the mass media and censorship. In Colombia, there was extensive freedom of expression of all political opinions. Since the television networks were State-owned, an adjudication process established a fair distribution of programming time. All political parties, from the far right to the far left, had daily access to airtime, even if they criticized the Government. All candidates for election also had access during electoral campaigns. Though the networks belonged to the State, they were operated in such a way as to promise pluralism.

38. A proposal had been introduced to establish an independent national board representating all groups in society, similar to the United States Federal Communications Commission, to regulate television operations. That was viewed as a step towards total privatization of the media, which was being brought about in part by increasing modernization of communications technology. Radio networks also maintained free access for all political groups, and radio news and opinion programmes were among the most popular. The Constitution expressly prohibited censorship, and while there might appear to be a risk from a reading of the relevant provisions, there was no censorship in practice.

39. The only function of the Film Classification Committee was to issue ratings for suggested audiences. The only films expressly prohibited were those which incited to violence.

40. Replying to Mr. Fodor's questions concerning the right to privacy, he said that when it was necessary to collect judicial evidence in rural areas where there might not be a sufficient number of judges, arrangements were made to facilitate travel by judges to those areas. Furthermore, under the new system in which indictments were drawn up by the new office known as the Fiscalía, all searches must be authorized by the judicial office coordinating the investigation. The evidence collected must be clearly relevant to establishing the guilt of the person under investigation. While judges were required to observe certain legal requirements, they were fully independent when it came to deciding whether the procedures for collecting evidence had been observed.

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41. Concerning the right to participate in the conduct of public affairs, under the new Constitution, a special election district in respect of the Senate had been established for ethnic and political minorities and for Colombians residing abroad. As a result, one representative of each of the two largest indigenous organizations had been elected to the Senate during the recent elections. A similar arrangement had been proposed for elections to the House of Representatives, but had not yet been enacted into law. The measure also represented a major step forward for Colombians residing abroad, who had previously been able to vote only in presidential elections. While political minorities were not clearly defined by law, they had significant representation in Congress, even though the Liberal Party still held a majority of the seats.

42. In reply to Mrs. Higgins' question concerning states of emergency and the right to freedom of movement, he said that a draft law on the subject was pending before Congress and would probably be adopted before July 1992. As pointed out by Mrs. Higgins, article 12 of the Covenant permitted the adoption, even under normal circumstances, of measures restricting freedom of movement in the interests of public order, provided that such measures were not incompatible with democracy. However, because of the sensitive nature of that issue in Colombia, his Government believed that freedom of movement should be restricted only in emergency situations, which was why the draft law envisaged certain guarantees. More extreme restrictions, which would involve the issuance of internal passports or safe-conduct passes, could, according to the Constitution, be imposed only during wartime and not in situations of domestic disturbance.

43. Journalists enjoyed extensive freedom of movement; the Constitution required the State to facilitate their access to areas of conflict and to protect them against threats to their safety. Journalists were thus able to conduct interviews, which were frequently broadcast on Colombian television, with members of guerrilla organizations.

44. In reply to the questions raised by Mr. Ando and Mr. El-Shafei concerning the right to freedom of expression and association, he said that the Constitution recognized the legality and the independence of trade unions and eliminated barriers to their establishment. The right to request special protection (derecho de tutela) from the courts guaranteed that trade unions would be able to operate freely. For example, there had recently been a number of strikes in the banking industry, and management had been prohibited by court order from resorting to lock-outs or other retaliatory measures, despite the often aggressive behaviour of the strikers.

45. Mr. MELO (Colombia) said that, under the new Constitution, a general legislative prohibition on strikes in the public sector had been abrogated; strikes were now prohibited only in the security forces and in essential public services as defined by law, rather than by the executive branch.

46. Turning to the question of whether the security conditions in the country permitted the real exercise of freedom of expression, he said that in the past six or seven years, there had been serious attempts to intimidate the Colombian press, so as to prevent it from reporting on the activities of drug traffickers. Freedom of expression was not limited on political grounds; for example, the Communist Party newspaper had circulated without restriction. However, the newspaper El Espectador, which had campaigned vigorously against the drug cartels, had been the target of repeated attacks: in 1985, its chief editor had been assassinated, and in 1989, its head office had been destroyed by a dynamite explosion. Murder charges had been brought against one Pablo Escobar.

47. In 1991, Diana Turbay, the chief editor of a weekly magazine and the daughter of a former President of the Republic, had been kidnapped by armed groups tied to the drug cartels, and had been killed by one of her abductors during a rescue attempt. However, since the promulgation of the new Constitution and the arrests of several drug overlords with ties to right-wing terrorist groups, such incidents had all but ceased. Furthermore, drug-related violence had never affected the strong tradition of independence among the Colombian media.

48. The trade unions had also come under attack. Many of their leaders had been assassinated, especially during the period from 1986 to 1990. The murders had occurred mainly in areas characterized by a high level of social conflict, where striking workers, trade unionists and left-wing guerrilla groups had been pitted against large plantation owners, drug traffickers and right-wing paramilitary units.

49. Another sector which had been singled out for attack was the teaching profession; as State employees and unionists who played a political role in some communities, teachers sometimes came into conflict with local right-wing forces tied to the drug trade. In Medellín, in 1991 alone, 25 teachers had been killed. The Office of the Presidential Adviser for the Defence, Protection and Promotion of Human Rights and the Ministry of Education had developed a programme under which, in the past two years, more than 200 teachers whose lives had been threatened had been transferred to new jobs in other areas; in all but two cases, the programme had protected them.

50. Trade-union leaders facing similar threats were sometimes provided with armed escorts or were authorized to carry weapons for self-defence, although that went counter to the general policy of disarming the civilian population. Taken as a whole, such measures had lessened the magnitude of the problem, although they had not completely eliminated it.

Non-discrimination, equality of the sexes and protection of family and children (arts. 2 (1), 3, 24 and 26 of the Covenant) (sect. V of the list of issues)

51. The CHAIRMAN read out section V of the list of issues concerning the third periodic report of Colombia, namely: (a) effectiveness of programmes and policies to achieve equality between men and women; (b) activities and accomplishments of the Office of the Presidential Advisor for Young People, Women and the Family; (c) impact of the Minors' Code on enjoyment by children of their rights under article 24; (d) problem of minors in anomalous situations and measures to address their needs; (e) information on the law and practice relating to the employment of minors.

52. Mr. CEPEDA (Colombia) said that the programmes and policies designed to enhance the role of women had been very successful and, as in other third world countries, the position of women had been transformed in a relatively short period. The principle of equality between the sexes had been enshrined in the new Constitution. Equal access to education had now been achieved in elementary and secondary schools, as well as in universities. Although the average income of women workers was 37 per cent lower than that of men, that was not due to unequal rates of pay for the same work, but rather to the fact that women's employment was concentrated in certain sectors, such as domestic service, where low pay was prevalent and few qualifications were required. Women were increasingly represented in senior posts in both the public and private sector and in political life. In recent local elections, 54 women mayors had been elected. The number of women in the total workforce had risen from 27 per cent in 1973 to 46 per cent at present. Although substantial progress had been achieved and discrimination outlawed in nearly all sectors, much remained to be done, particularly with regard to equal pay, better childcare arrangements and improved training for women.

53. Another factor which had helped enhance both the status and health of women had been the success of the Government's family planning programmes, which had been introduced despite of the country's strong Catholic traditions and in the face of opposition from the Church. Between 1970 and 1990 the annual birthrate had been reduced from 3.4 per cent to 1.9 per cent, thereby easing the problem of large families which had previously been an obstacle to women's access to education and the labour market.

54. The Office of the Presidential Adviser for Young People, Women and the Family had been established in 1991 and was now receiving substantial government funding. Its main role was to organize group activities for young people, including anti-drug education, as well as cultural and recreational programmes. It had been instrumental in setting up family commisarías in various cities, which provided family counselling and dealt with complaints of domestic violence and other matters. Together with the Colombian Family Welfare Institute, it had helped to set up children's homes staffed by volunteers which catered to more than 1 million children in need.

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55. Supplementary feeding programmes had been launched and free food was being provided in schools for some 300,000 children. Substantial resources were now being devoted to child protection programmes and the percentage of the gross domestic product devoted to education was now on a par with many Western countries. A national plan for sex education had recently been launched to increase awareness of the AIDS epidemic and laws had recently been adopted to prohibit the segregation of persons suffering from AIDS or infected with the HIV virus.

56. The Constitution also provided for special protection measures for children and all health institutions receiving State assistance, whether public or private, were required to provide free treatment for children under one year of age.

57. Although the Minors' Code had been drawn up in 1990, when the United Nations Convention on the Rights of the Child was not yet in force in Colombia, it had attempted to embody the provisions of the Convention, which the Government had expressed the intention of ratifying. The Code contained a set of wide-ranging and practical requirements for the protection of children. One of the main aims was to ensure that all minors who had committed offences but were too young to face charges were housed in re-education institutions, separate from adults, rather than in prisons. The Colombian Family Welfare Institute and the Ministry of Justice were making funds available for the establishment of such institutions, where young offenders would be kept for a maximum of three years.

58. In Colombia, as in other third-world countries, child labour was a serious problem and at present there were some 800,000 children in employment. The employment of minors was legal, under restricted conditions, for children between the ages of 12 and 14, although many activities were prohibited and a permit was required from the Ministry of Employment guaranteeing that the child would attend school, which was compulsory up to the age of 14. The Code sought to introduce stricter provisions and adapt State institutions so as to ensure effective monitoring of the child labour situation.

59. With regard to child prostitution, efforts were being made to persuade victims to seek refuge in residential institutions providing rehabilitation facilities and alternative activities.

Rights of persons belonging to minorities (art. 27 of the Covenant) (sect. VI of the list of issues)

60. The CHAIRMAN read out section VI of the list of issues concerning the third periodic report of Colombia, namely: (a) factors or difficulties hampering the implementation and enjoyment of the rights under article 27 of the Covenant; (b) measures taken by the Indigenous Affairs Division, the National Committee for Aboriginal Languages or any other governmental bodies

(The Chairman)

to assist in maintaining native cultural traditions or languages in various regions of the country, and the results of such measures; (c) measures envisaged for the protection of minorities, such as the establishment of a Presidential Adviser on Minority Affairs; (d) measures envisaged by the special commission on Amazon Indian affairs to overcome the ecological deterioration of the area in the Amazon region affecting the social and cultural organization of the indigenous communities there; (e) whether minority groups had been represented in the Constituent Assembly.

61. Mr. CEPEDA (Colombia), referring to section VI (b), said that article 7 of the Constitution guaranteed the ethnic and cultural diversity of the nation, while article 70 stressed that all cultures had equal status and dignity before the law. In the linguistic sphere, languages other than Spanish were considered to be official in the areas where they were spoken. Everyone had the right to use his or her native tongue in any part of the national territory. Bilingual education had been established to ensure the integration of those who were monolingual into the country's economic and political life.

62. With regard to San Andrés, a Caribbean island whose inhabitants spoke a language derived from English, measures had been adopted under article 310 of the Constitution to protect the community's cultural identity by restricting residence on the island and the sale of its property to outsiders.

63. The Constitution recognized the inalienable right of indigenous peoples to certain lands, which had been accorded the status of self-governing territorial entities. The State was required to invest a certain amount in those entities with a view to improving the living conditions of their people, who had full control over the funds. Any natural resources in the entities could be developed only with the consent and participation of the community, and if the entity contained a nationally protected area, it was under collective ownership.

64. Special provisions existed to protect the country's archaeological heritage. The State was obliged to re-acquire parts of that heritage which had fallen into the hands of private individuals. It was also required to respect the rights of ethnic groups in areas where important archaeological sites were located.

65. Encouragement was given to forms of education which sought to respect and develop the cultural identity of ethnic groups, and efforts were being made to safeguard the electoral rights of minorities and improve their representation in Congress, notably through the work of the National Electoral Council.

66. Minorities were also entitled to establish special jurisdictions within their territories, where the laws of the indigenous community could be applied, provided that they did not conflict with the provisions of the Constitution. Bodies had also been set up to protect the territorial rights

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of minorities and to monitor and analyse draft laws and decisions which might affect indigenous communities, with a view to securing the broadest possible participation in decision-making by all those concerned.

67. The Constitution included specific provisions on the right to a healthy environment and enshrined the basic principle that there should be public participation and consultation with regard to decisions likely to have an impact on the environment. Provision was made for the protection of bio-diversity and of flora and fauna in the Amazon and other regions, while freedom of movement could be restricted in zones of particular environmental importance. Where responsibility for such zones was shared with neighbouring countries, the State was required to cooperate fully with those countries. The Constitution also prohibited the export of genetic resources, including certain endangered animal species. The importation and use of certain dangerous substances such as nuclear materials was also prohibited.

68. Mr. CEPEDA (Colombia) said that the importing of toxic wastes into Colombian territory was now prohibited. He also stressed the benefits to the environment of the series of measures adopted recently in favour of indigenous communities in the Colombian Amazon. During the preceding five years, the State had recognized the collective ownership by indigenous communities of approximately 15 million hectares of land in the Amazonian region, which represented more than 50 per cent of Colombia's tropical rainforest. Ownership of those lands was recognized as inalienable under the Constitution. That measure had succeeded in curbing the influx of businesses and individuals seeking to acquire property in the region for development. Furthermore, the prior approval of the indigenous communities was now required for any activities involving the economic exploitation of the rainforest, a measure which had helped to restrict economic activity in the zone, thereby reducing the attendant damage to indigenous communities and to the environment in general.

69. Mrs. HIGGINS asked about the tensions existing between the indigenous population and the black community. The indigenous peoples could preserve their lands from commercial development through proof of ancestral rights. Members of the black community were concerned that, in the absence of any ancestral claim, they would be driven from their lands.

The meeting rose at 1 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1139th MEETING

Held at Headquarters, New York,
on Friday, 3 April 1992, at 3 p.m.

Chairman: Mr. POCAR

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Colombia (continued) (CCPR/C/64/Add.3)

1. At the invitation of the Chairman, Mr. Cepeda and Mr. Melo (Colombia) took places at the Committee table.

2. The CHAIRMAN said that the Colombian delegation would answer questions held over from sections V and VI of the list of issues.

3. Mr. SERRANO CALDERA asked for more information concerning the special jurisdictions under which ethnic minorities were authorized to apply their own norms, provided that those norms did not conflict with constitutional principles, and in what specific cases such departures from general legal norms occurred.

4. Regarding ownership of indigenous property which was protected by the Constitution, particularly in the Amazon region, he wondered if it was held on a communal basis or owned by individuals. He also wished to know whether the indigenous population was entitled to permanent parliamentary representation as an ethnic group and whether the special provisions on behalf of indigenous minors formed part of the Minors' Code or were contained in separate legislation.

5. Turning to the situation of minors in the population as a whole, he asked what provision had been made for sanctioning parents and others who mistreated minors and, in the light of the very high figures for juvenile employment, whether action was being taken to enforce the right of young people to education.

6. Mr. PRADO VALLEJO asked whether Colombia had been confronted with the problem of fraudulent adoption of minors by foreign couples and whether there had been any instance of children being abducted with a view to selling their organs on the international market.

7. He welcomed the decision to promote participatory democracy through the introduction of machinery for popular consultations and wondered how successful that initiative had been in practical terms. The Committee would appreciate additional information regarding the procedures, mentioned in paragraph 213 of the report, whereby indigenous minorities elected their own authorities and decided on their own development models.

8. It would also be interesting to hear whether Colombia had encountered any difficulties in reconciling development of its oil reserves with the maintenance of a balanced ecosystem.

9. Mr. ANDO inquired about the legal status of married women in Colombia in matters relating to matrimonial property, and whether there was any evidence of conflict between the policy of granting a large measure of autonomy to indigenous populations and efforts to guarantee equal rights for women.

10. Mr. WENNERGREN wished to know what kind of strategy had been adopted to deal with the problem of street children.

11. Mr. CEPEDA (Colombia) said that while Colombia's black community was not protected to the same extent as the indigenous population, the provision under article 63 of the Constitution regarding the inalienability of the communal lands of ethnic groups afforded protection for members of the black community living in areas of communal land ownership.

12. Article 246 of the Constitution merely established a general principle concerning special jurisdictions for the indigenous population, the legislative details of which had yet to be worked out. The scope of the jurisdictions would be analysed in consultation with the Commission on Indigenous Policy and members of the communities concerned. As an example of the areas to be covered, he mentioned that certain offences under the country's penal code were not considered reprehensible in indigenous communities owing to differences in culture or tradition.

13. Property in the Amazon region was owned by the community and not by individuals. There were two indigenous representatives in the Chamber of Representatives and two in the Senate elected by the special constituency.

14. With regard to the move from formal to participatory democracy, many of the instruments designed for that purpose were recent and had not yet been used.

15. Women in Colombia had equal status with men under the law. In the case of the indigenous community, customs were respected but no discrimination was allowed on grounds of sex. There had as yet been no specific instances of conflict.

16. Mr. MELO (Colombia) said that care was taken, in the case of indigenous minors, to avoid undue legal encroachment on traditions. Their special circumstances were taken into account provided that those circumstances were not in conflict with the law. Adoption was permissible only if indigenous minors were abandoned outside their communities and the Indigenous Affairs Division of the Ministry of Government had to be consulted in all cases.

17. The Minors' Code laid down procedures for dealing with cases of minors ill-treated by their parents or guardians, with graded punishments depending on the seriousness of the offence.

(Mr. Melo, Colombia)

18. Adoption was carefully regulated in the Code in the light of many years' experience of fraudulent adoption by foreigners. Adoption was permissible only if a child had been declared abandoned by a magistrate or if his or her parents had given their consent. The Institute of Family Well-Being had to be consulted in all cases and its approval was required for all foreign adoptions.

19. Rigorous investigations had been conducted into reports of trafficking in children's organs but not a single victim or confirmed case had been found.

20. He said that affirmative action on behalf of children was based on a policy of guaranteeing access to education so that there would be less incentive to send children out to work at an early age. He quoted figures to show how educational coverage was being extended at every level in a concerted effort to achieve education for all.

21. During the 1960s, a time of heavy migration, street children had been a serious problem, but better living conditions and lower birth rates had helped to alleviate the situation. In recent years such children were mostly children who had run away because of ill-treatment or conflict at home. The authorities concluded contracts with charitable and non-governmental organizations, which arranged for adoption or admission on a voluntary basis to institutions that provided educational and training facilities.

22. With regard to the protection of indigenous peoples, he noted that their reserves were registered with the Government by their respective local councils (cabildos), which were generally elected by popular vote. The national authorities did not interfere in those elections, and within their territory the local councils were the administering authorities.

23. Development models had been created for the indigenous peoples, although there was still a need to coordinate them with national development models. For budgetary purposes indigenous communities were treated as municipalities and received appropriations from the national budget.

24. Indigenous peoples were entitled to be consulted on any investment in development of subsoil resources within their reserves, although the resources themselves were the property of the State. The aim was to achieve sustainable development, and it was up to the indigenous people themselves to determine how far they wished to be integrated into the national economy.

25. Generally, oil wells were near the coast rather than in the jungle; none the less, they did pose some environmental problems, primarily because of spills from the pipelines, which sometimes threatened groundwater supplies. Some spills had been caused by terrorist attacks and had, in turn, led to environmental protests.

26. Mr. MAVROMMATIS said that he was glad to hear that the Government took into consideration the traditional laws and customs of indigenous peoples. He wondered, however, whether it could ensure that no rights guaranteed under the Covenant were violated, even when such violation was dictated by aboriginal culture.

27. Mr. MELO (Colombia) replied that the issue was a very complex one. The Government sought to accommodate cultural differences to the extent that traditional practices did not conflict with the rights of the Covenant. That meant that the autonomy of native communities took precedence over administrative considerations but not over fundamental rights: refusal of treatment for a sick child would be considered a violation of fundamental rights.

28. Mr. PRADO VALLEJO said that the delegation had provided a clear and complete picture of human rights in Colombia. The Government had introduced positive reforms and the dialogue with the Committee had also been positive. The Committee had noted certain problems, but had also seen that important progress had been made.

29. All members of the Committee had expressed concern regarding continuing human rights violations, primarily by paramilitary groups, some of which had links to the armed forces. The Government was very aware of the problem and had made great efforts to stem the violence.

30. The Committee wished to accentuate the positive aspects of the situation in Colombia and hoped that the Government's efforts would be successful and that the rule of law would prevail.

31. Mr. EL-SHAFEI said that the report and the delegation's answers to the Committee's questions had shown that the Government was making a genuine effort to enforce human rights and to strengthen institutions for their defence.

32. Given the continuing violence it was difficult to make a valid assessment of the situation; however, the Committee was concerned that the conflict had led the Government to commit serious abuses, that crimes often went unpunished because of inadequate investigation and the ineffectiveness of the judicial system, and that the civilian Government seemed unable to take appropriate action to put an end to the situation.

33. The question of impunity was at the centre of Colombia's feeling of insecurity and terror and must be eliminated. Members of the police and armed forces who tolerated or promoted paramilitary activity must be discharged and a concerted effort must be made to dismantle paramilitary groups and punish human rights violators. In countering the actions of paramilitary groups the Government must refrain from adopting the tactics used by them, and confine itself to lawful policies and actions. He hoped that the dialogue between the Committee and the delegation would prove useful and that the delegation would convey to the Government the sense of the current deliberations.

34. Mr. FODOR welcomed the positive process undertaken by Colombia over the previous few months, and the constructive approach adopted by the extremely competent delegation. Colombia had until recently been a major human rights violator and one of the most violent countries in the world, where massacres, disappearances, torture and arbitrary arrests were common occurrences. They had not been totally eliminated, although terrorism by the drug lords had decreased considerably over the previous year.

35. Recent Government efforts, including the adoption of a new Constitution, had brought significant advances in the enforcement of human rights. However, the police and armed forces in some cases appeared able to violate human rights with impunity. He was confident the situation would continue to improve.

36. Miss CHANET said that the delegation had been very well prepared and quite frank with the Committee. It was clear that Colombia was intent on fighting human rights violations; it was equally clear that the task facing the country was immense. Torture, executions and disappearances still continued, but commendable efforts were being made to eliminate them and more than 300 individuals suspected of excesses had been punished or discharged. With regard to the remedy of tutela, it was too soon to judge whether it would be effective in guaranteeing individual liberty.

37. The number of homicides - summary executions and the so-called clean-ups - was still intolerably high and police and military personnel appeared still to act with impunity. The treatment of working children also remained a major concern. The right of every child to protection guaranteed by article 24 of the Covenant was at odds with the employment of children of 12 to 14, however limited and regulated it might be.

38. She recommended that the Government of Colombia should take into account the views of the members of the Committee on the need to adapt its emergency measures legislation to article 4 of the Covenant, whose provisions on the circumstances in which states of emergency could be declared should be incorporated in the law. Proportionality should be observed and the rights that might be derogated from, as well as the non-derogable rights, should be specified.

39. In summary, Colombia was tackling its problems head-on and attempting to modernize the country and its institutions so as to combat the evils now afflicting it.

40. Mr. MAVROMMATIS said that the delegation had conducted a very satisfactory dialogue with the Committee and had demonstrated that the Government was making a real effort to face its problems. The Government had powerful new weapons at its disposal in the form of the new Constitution and application of the concept of amnesty. The problems that existed were evidently being tackled, and he looked forward to further progress in the near future.

41. Mr. SERRANO CALDERA said that the delegation's replies to the points raised by the Committee underscored the seriousness of the Government's attitude towards the protection of human rights. While human rights violations were inevitable, given the continuing climate of violence which was attributable essentially to political issues and to the great power wielded by the drug traffickers, it was clear that progress was being made.

42. Colombia was one of the few countries in Latin America that was endeavouring to adjust the legal system to reflect economic and social realities while others continued trying to graft unsuitable models on to quasi-feudal societies. The new Constitution, the culmination of a series of carefully orchestrated economic, social, political and legal measures, was the result of a purely internal process.

43. Colombia must continue to follow the path of social and political consensus, and must focus on guarantees for human rights and protection against the abuse of military power. By continuing along that road, Colombia would set an example for Latin America as a whole.

44. Mr. ANDO welcomed the Government's long-term commitment to human rights. Human rights violations in Colombia occurred largely as a result of activity by guerrillas and drug traffickers. There were, in addition, inequalities, especially where indigenous rights, children's rights and sexual equality were concerned. The problem of drug trafficking had an international dimension, and the international community should be prepared to lend assistance. Human rights violations would continue until the economic and social structure of Colombian society was reformed. While that would necessarily be a long-term process, it was essential.

45. Mrs. HIGGINS said that the third periodic report of Colombia contained the information the Committee needed. In particular, it provided details of the new constitutional arrangements. Moreover, the delegation had provided excellent answers and evidenced a positive attitude towards human rights.

46. While problems still remained, Colombia was certainly making progress. Initiatives had been taken in every area of concern to the Committee, including guarantees of a fair trial and efforts to bring the military under civilian control. She urged the Government not to overlook case law, which was of such importance at an individual level, and formed an essential part of the Government's relationship with the Committee.

47. Mr. DIMITRIJEVIĆ said that all countries had specific difficulties that outsiders did not always fully appreciate. Colombia faced the singular difficulty of a powerful group of drug traffickers whose means rivalled or even surpassed those of the Government itself. Given the international dimension of the problem, international support was appropriate.

(Mr. Dimitrijević)

48. In addition, politically motivated violence had been a fact of life in Colombia for some time, and it was unlikely that it could be eliminated overnight. The adoption of the new Constitution, based on a broader political spectrum, was a very positive development in that connection.

49. The third main problem faced by the country was the influence of the military. The Government had perhaps relied too heavily on the military in the past and should start to review the whole strategy of combating violence with violence. It might try instead to rely more on social and political reform in an endeavour to tackle the roots of the problem. Colombia now faced "social clean-up" activities by paramilitary groups, claiming to defend the existing order. Those groups sought to eliminate "undesirables", such as street children and the economically disadvantaged. On a positive note, Colombia had found an original means of promoting consensus through the adoption of the new Constitution. The Committee looked forward to further positive developments.

50. Mr. WENNERGREN said that the situation in Colombia had improved markedly and the new Constitution represented a remarkable breakthrough. The system of participatory democracy that Colombia was establishing was particularly praiseworthy, and would further stimulate the country. The functions newly assigned to the Office of the Attorney-General represented a very positive development. The biggest remaining difficulty was that of military jurisdiction in certain instances and official immunity. The less Colombia relied on military courts, the better the outcome would be.

51. The CHAIRMAN said that he was grateful to the Colombian Government for sending representatives with such special competence in the field of human rights. They had given exhaustive and precise answers to all questions raised by the Committee, and in a frank and open dialogue had dealt constructively with the relevant laws, events and facts, without masking the very serious situation in the country. In so doing they had reflected their Government's admirable attitude towards the protection of human rights. Despite the enduring problems, he shared his colleagues' optimism that the Government had now gained control of the situation.

52. Mr. MELO (Colombia) said that he generally agreed with the Committee's analysis of his country's basic problems, and its view that the central issue remained the impunity of criminals. Once the Government succeeded in eliminating that, the final blow would have been dealt to the paramilitary groups, and the drug traffickers could be held within the normal limits of criminality to be found in other countries. The Committee could be sure that all forthcoming legislation would also fully respect the norms of the Covenant as mandated by Colombia's Constitution, and that any new legislation would be tested immediately in the courts by its citizens as a second step in institutional consolidation. His Government would carefully scrutinize the points members had raised, and would review its legislation in that regard. One area requiring attention would certainly be the remnants of the military penal justice system; thus far the Government had been unable, due to

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political considerations, to impose stricter controls in that area. It was currently considering a series of institutional and social policies that would make for a greater political openness and a culture of tolerance conducive to the peaceful resolution of internal conflicts. Politics was often defined as the art of the possible. He hoped that his Government's determined efforts to gain control of the situation would make politics in his country the art of attaining the impossible.

53. The CHAIRMAN thanked the Colombian delegation and said that Colombia's fourth periodic report would be due in 1995.

54. Mr. Melo and Mr. Cepeda withdrew.

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

Draft general comment relating to article 7 of the Covenant (future CCPR/C/21/Rev.1/Add.3)

55. The CHAIRMAN drew attention to the informal document containing the draft general comment relating to article 7 of the Covenant, which would replace its earlier draft general comment No. 7 (16).

56. He recalled that the Committee had decided at its 1124th meeting, during the discussion of the draft general comment on article 10, that the following sentence should be added to paragraph 11 of the draft general comment on article 7: "In this connection, the State party should see to it that places of detention do not contain equipment liable to be used for ill-treatment or torture." He suggested that the sentence should be inserted before the penultimate sentence of that paragraph, and would take it that paragraph 11, as amended, was adopted.

57. It was so decided.

58. Mrs. HIGGINS, with reference to paragaraph 15 of the draft general comment, drew the Committee's attention to her correspondence with a non-governmental organization, the International League for Human Rights, which had suggested that the current wording of paragraph 15 gave the impression that, so long as amnesties in respect of acts of torture did not interfere with the victim's right to an effective remedy, the Committee favoured the adoption of such amnesties.

59. Since that was not the Committee's intention and was not in line with its past jurisprudence, she suggested that paragraph 15 should be amended to read:

> "The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties that prevent investigation and punishment of acts of torture are generally incompatible with the duty of States to protect persons within their jurisdiction from torture. In

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addition, States may not adopt measures that deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.".

60. Mr. DIMITRIJEVIĆ observed that States had a duty not merely to protect against such acts but to ensure that they did not occur in the future; he would add a clause to that effect at the end of the second sentence in order to reflect the Committee's past jurisprudence.

61. Miss CHANET said that she agreed that the last sentence of the paragraph should be reworded to avoid giving the wrong impression, but pointed out that it was the very nature of an amnesty to prevent punishment and that, moreover, the right to declare amnesties was established in the constitutions of many States, including her own. In order not to come into conflict with such constitutional laws or with the definition of amnesty, she suggested using less specific wording that did not allude to preventing punishment.

62. Mr. MAVROMMATIS said that he agreed with Miss Chanet, and that amnesties could be a very healing and useful tool.

63. Mr. HERNDL said that although he could accept the addition of a definition of amnesty as preventing investigation and punishment, he doubted whether any of paragraph 15 needed amendment, except to correct the impression given in the last sentence.

64. Mrs. HIGGINS suggested the following further revisions: the second sentence of paragraph 15 should read: "Amnesties that prevent investigation of acts of torture are generally incompatible with the duty of States to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future." The third sentence should read: "States may not deprive individuals of the right to an effective remedy," etc.

65. The CHAIRMAN said that he would take it, if he heard no objection, that the Committee wished to amend paragraph 15 as just proposed by Mrs. Higgins, and that it wished to adopt the draft general comment relating to article 7 of the Covenant, as a whole and as amended.

66. It was so decided.

The meeting rose at 6.10 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1140th MEETING

Held at Headquarters, New York,
on Monday, 6 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. El-SHAFEI (Vice-Chairman)

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The meeting was called to order at 10.40 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION

1. Mr. ANDO, Rapporteur, introduced a document concerning action taken by the General Assembly at its forty-sixth session. Section (a) of the document concerned the annual report of the Human Rights Committee under article 45 of the Covenant and summarized the discussions held by the Third Committee at its 39th to 43rd meetings from 12 to 18 November 1991 concerning the fifteenth annual report of the Human Rights Committee. The Committee had been commended for its excellent work and for the significant progress it had made in implementing human rights standards, as well as for action taken in response to the situations in Iraq and Yugoslavia. Appreciation had been expressed for the Committee's useful general comments and its decision to update comments on articles 7 and 10 and to begin work on general comments on articles 18, 25 and 27. The increased attention given to the question of discrimination against minorities had also been welcomed.

2. Section (b) of the document concerned the effective implementation of international instruments on human rights, which had also been discussed by the Third Committee at its 39th to 43rd meetings. The vigilance and solidarity of the United Nations human rights bodies had been recognized and several delegations had welcomed the publication of the reporting manual and the adoption of the consolidated guidelines. Support had also been expressed for computerization and it had been suggested that the submission of reports could be simplified through the consideration of multiple reports presented together. It had been suggested that more attention should be given to publicizing the work of the committees concerned with human rights in order to raise public awareness of human rights instruments and support had been expessed for the holding of regional workshops on human rights instruments in preparation for the World Conference on Human Rights. Some delegations had expressed the view that the question of emergency humanitarian intervention should be examined more closely, with particular reference to the Committee's action in the cases of Iraq and Yugoslavia.

3. Section (c) dealt with the commemoration by the General Assembly of the twenty-fifth anniversary of the adoption of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocol. The General Assembly had discussed the matter at the 73rd meeting of its forty-sixth session on 16 December 1991. It had noted the significant impact of the work of the Human Rights Committee on the review made by Governments of national law and practice.

4. Section (d) referred to the resolutions adopted by the General Assembly at its forty-sixth session, in particular resolution 46/113 entitled "International Covenants on Human Rights", resolution 46/111 entitled "Effective implementation of international instruments on human rights", including reporting obligations under international instruments on human rights, and resolution 46/81 adopted on the occasion of the twenty-fifth

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anniversary of the adoption of the International Covenants on Human Rights, which urged all States that had not yet done so to become parties to the Covenants and Optional Protocols at the earliest moment.

5. Mr. EL-SHAFEI said that he would welcome clarification of the meaning of the statement in section (b) that the Committee could adopt new, more direct working methods, including interaction with relevant non-governmental organizations. He asked whether the statement referred to the Committee's work in connection with Iraq and Yugoslavia or to other matters.

6. Mr. ANDO said that the remark had no direct bearing on the Committee's work on Iraq or Yugoslavia but should be understood in more general terms.

7. Mr. HERNDL welcomed the support expressed for computerization, which was a matter of great importance. He also endorsed the view that additional staff should be provided to service the treaty bodies, since the resources of the Human Rights Committee were very stretched at the present time. He wanted to know what the holding of joint meetings between human rights bodies would involve. He asked whether the intention was to hold joint sessions of the treaty bodies themselves or meetings between their bureaux, special delegations or chairmen. He also asked for more details concerning the scope of the proposed resource room for the Centre for Human Rights.

8. Miss CHANET said that the points raised in the document should be given proper consideration, either by the Working Group on article 40 of the Covenant or by ad hoc working groups. The question of minorities was of particular importance and the Committee needed to speed up its work on the general comment on article 27, which was the only provision in force on the matter. She felt that the Committee had already responded to the suggestion that more direct working methods should be employed, although the question of working more closely with relevant non-governmental organizations required further study. The questions of fact-finding missions, emergency intervention and good offices also needed more detailed consideration and the Committee should put forward proposals and play an active role.

9. Finally, she wanted to know what was meant by the suggestion that the International Court of Justice should be asked to consider reservations lodged by State parties. She wondered exactly how that could be done.

10. The CHAIRMAN, replying to Mr. Ando's question about joint meetings, said that the aim was for representatives of different treaty bodies to meet in order to discuss questions of common interest, bearing in mind that the various human rights instruments overlapped to a certain extent. In that connection, he recalled that at its previous session the Committee had taken a decision in principle to appoint members to ensure liaison with other treaty bodies. The member concerned would report back to the Committee on issues being discussed by other treaty bodies which were relevant to its own work.

11. The proposal for a resource room was a long-standing recommendation by the meeting of persons chairing the human rights treaty bodies. The aim was

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to make available a room in Geneva where certain relevant documentation would be immediately available for consultation by Committee members.

12. Mr. WENNERGREN, referring to the remarks in section (b) concerning successful implementation of the Committee's recommendations, pointed out that the Committee's rules of procedure did not reflect the way in which it now dealt with reports by State parties and contained no provisions at all concerning effective follow-up. He felt that the rules of procedure needed to be amended or supplemented. Perhaps the Working Group on article 40 of the Covenant could be asked to consider the matter and make relevant proposals.

13. Mr. ANDO welcomed Mr. Wennergren's suggestion. In reply to Miss Chanet's question concerning the International Court of Justice, he said that obviously the Committee could not consult the Court directly, but could only make a recommendation to the General Assembly, which could then request an advisory opinion. At the present juncture, it was no more than a theoretical possibility, but, given the number of reservations to the Covenant and the Optional Protocol lodged by certain countries, it was worthy of further consideration.

14. The CHAIRMAN drew the Committee's attention to Commission on Human Rights resolution 1992/14, adopted in February, which dealt with the status of the International Convenants on Human Rights. In paragraph 8 of the resolution, the Commission welcomed "efforts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to improve their methods of work" and, in paragraph 12, urged "States parties to take duly into account, in implementing the provisions of the Covenants, the observations made at the conclusion of the consideration of their reports in the Human Rights Committee and by the Committee on Economic, Social and Cultural Rights". In paragraph 9 of the same resolution, the Commission welcomed "the continuing efforts of the Human Rights Committee to strive for uniform standards in the implementation of the provisions of the International Covenant on Civil and Political Rights" and appealed "to other bodies dealing with similar questions of human rights to respect [those] uniform standards as expressed in the general comments of the Human Rights Committee".

15. Commission on Human Rights resolution 1992/14 was an invitation to the Committee to continue to pay special attention to states of emergency. Perhaps the Committee might consider asking States parties to submit special reports in cases of both official and de facto states of emergency.

16. In paragraph 18 of its resolution 1992/15, the Commission on Human Rights requested the Secretary-General to ensure that the United Nations Manual on Human Rights Reporting was available in all official languages at the earliest opportunity. Perhaps the Committee should take note of that request and ensure that the Manual was translated into all official languages as soon as possible.

17. With respect to coordination between the Human Rights Committee and other United Nations bodies, a point had been raised at the session of the

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Subcommission on Prevention of Discrimination and Protection of Minorities regarding coordination with the Human Rights Committee. Paragraph 13 of the report of the Subcommission (E/CN.4/1992/46) dealt with that eventuality. He had discussed the matter with the Chairman of the Subcommission and had agreed that it might be useful to establish certain contacts between the two bodies. Perhaps the Committee could appoint a member responsible for liaison with the Subcommission.

18. Ms. KLEIN (Secretary of the Committee) said that the introduction of computers for use by the Human Rights Committee would be complementary to the computerization of the work of the Centre for Human Rights as a whole. A task force had undertaken a study of the matter, which had been approved by the Commission on Human Rights and the General Assembly. On 28 February 1992, the Secretary-General had sent out notes verbales seeking voluntary contributions from all Member States, particularly States parties to the various treaty bodies, for the establishment of a database. The database would cost approximately $500,000. Operating costs would be borne by the regular budget of the United Nations.

19. The database would facilitate the work of the members of treaty bodies and improve coordination among such bodies. The database would also be useful to States parties wishing to have access to information on their implementation of human rights treaties and would facilitate their preparation of reports.

20. Once sufficient voluntary contributions had been received, it would take about 18 months to establish the database in the International Instruments and Procedures Section of the Centre for Human Rights.

21. The CHAIRMAN said that, at the recent session of the Commission on Human Rights, a document from a non-governmental organization dealing with a view adopted by the Committee with respect to a particular case had been circulated. The document suggested that the Committee's views contradicted its decision on admissibility, and that the Committee should therefore clarify its views. In his view, however, the document misrepresented the Committee's views and he therefore believed that no clarification was necessary. In its annual report, the Committee should take note of the document. He suggested that the Commitee should revert to the matter at a future meeting.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS

22. The CHAIRMAN said that, since the second meeting of the Preparatory Committee for the World Conference on Human Rights was currently taking place at Geneva, the Committee should postpone its consideration of the item until its next session in July.

23. It was so decided.

24. Mr. El-Shafei (Vice-Chairman) took the Chair.

CONSIDERATION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment regarding article 10 of the Covenant (continued) (CCPR/C/44/CRP.2)

25. The CHAIRMAN said that the draft general comment contained the suggestions and amendments that had been introduced by the members of the Committee at the current session.

Paragraphs 1 to 7

26. Paragraphs 1 to 7 were adopted.

Paragraph 8

27. Mr. WENNERGREN said that "States" should read "States parties", in accordance with usage in other paragraphs.

28. Paragraph 8, as orally amended, was adopted.

Paragraph 9

29. Paragraph 9 was adopted.

Paragraph 10

30. Miss CHANET said that one sentence of the text that had originally been agreed on had inadvertently been omitted from the general comment and should be restored. The sentence in question came between the first and second sentences.

31. Mr. DIMITRIJEVIĆ supported Miss Chanet's observation, pointing out that omission of that sentence would leave paragraphs 10 and 11 unclear as to the purpose of imprisonment.

32. The CHAIRMAN assured the Committee that the omitted sentence would be restored in the final text.

33. Paragraph 10 was adopted.

Paragraph 11

34. Mr. WENNERGREN suggested the addition of the words "education and" before "re-education", as some prisoners were illiterate and required basic education, rather than re-education.

35. Paragraph 11, as orally amended, was adopted.

Paragraph 12

36. Paragraph 12 was adopted.

37. Mr. MÜLLERSON said, with reference to the last sentence, that the year of adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice should be specified, as well as the body which had adopted those rules. Inclusion of that information would help clarify the reference and facilitate efforts by States parties to familiarize themselves with the instrument in question.

38. Mr. DIMITRIJEVIĆ supported Mr. Müllerson's suggestion on the inclusion of the year of adoption, in conformity with the Committee's practice in its general comments, and suggested also that the slightly peremptory language should be amended to read "States parties are invited to indicate", as it was outside the competence of the Committee to impose such obligations upon States parties.

39. Mr. HERNDL noted that the respective years of adoption should also be included in paragraph 5, in order to assist States parties in locating those instruments, which had all been adopted at different times.

40. The CHAIRMAN agreed with Mr. Herndl's suggestion and said that the text of paragraph 5 would be amended accordingly.

41. Mr. WENNERGREN said that the word "maximum" in the sentence: "The Covenant does not indicate the maximum age of a juvenile offender" was misleading, as the minimum age was also a cause of concern, and he suggested, therefore, that it should be replaced with the word "relevant".

42. Mr. DIMITRIJEVIĆ agreed that the word "maximum" was misleading, but suggested that it should be omitted altogether, particularly since it was not represented in the French original.

43. Mr. AGUILAR said that a distinction should be observed between the age of criminal liability, on the one hand, and the age of majority, on the other, and he wondered whether the English wording "age of a juvenile offender" was not confusing.

44. The CHAIRMAN suggested that the sentence in question could be reworded: "The Covenant does not indicate the age of criminal liability".

45. Mr. MÜLLERSON said that the point at issue was not the age of criminal liability but the age of juveniles who were detained and he suggested, therefore, the wording: "The Covenant does not indicate the age of a juvenile offender who is detained."

46. Mr. WENNERGREN said that the term "juvenile offender" should be used in the same sense as it was used in article 10 of the Covenant and he suggested, accordingly, that the wording of the English, French and Spanish versions of the general comment should be in line with that of the respective versions of the Covenant.

47. Miss CHANET said that the Committee was attempting to redraft the paragraph without taking into account what had already been adopted. The decision had been to state, in paragraph 13, that the Covenant did not indicate what the age of criminal liability should be; that was to be determined by each State party in the light of the relevant social and cultural conditions. The Committee's intention had been to emphasize the age of criminal liability, which was not the same as the age of majority in penal matters. In France, for example, the age of criminal liability was 13, while the age of majority in penal matters was 18.

48. Mr. AGUILAR said that he agreed with Miss Chanet. Where the English text of article 10, paragraph 3, of the Covenant referred to "juvenile offenders", the Spanish version spoke of "menores delincuentes". A "menor delincuente" was a person who had committed an offence and who, because of his age, could not be tried under the law applicable to the adult population. In many countries, there were persons who were technically minors, but who were adults from the point of view of criminal law. The age of majority in penal matters was not necessarily the same as in civil matters.

49. Mr. MÜLLERSON said that article 10 dealt only with persons deprived of their liberty and had nothing to do with the age of criminal liability. What was important in that connection was the minimum, not the maximum, age, since in some countries, children of five or six were held to be criminally responsible. The maximum age was important when it was necessary to determine whether a person was a juvenile offender who should therefore be separated from incarcerated adults. He agreed with Mr. Wennergren that the Committee should use the terminology employed in article 10 of the Covenant, in other words, "juvenile persons" or "juvenile offenders", as in paragraph 3.

50. Mr. DIMITRIJEVIĆ said that the Committee was not faced with a drafting problem; rather, the decision before it was whether to incorporate in its draft general comment the broader issues of juvenile delinquency and the age of criminal liability, or to confine itself to the issue of detention. He believed that the Committee should adopt Mr. Müllerson's proposal and should limit itself to the terminology used in article 10. As a compromise, he suggested that the seventh sentence of paragraph 13 should read either "The Covenant does not indicate the maximum age of a juvenile offender" or "The Covenant does not define the term 'juvenile offender'". The Committee could then go on to suggest in the next sentence that persons under 18 should be treated as juvenile offenders.

51. Mr. WENNERGREN said that he supported the statements made by Mr. Müllerson and Mr. Dimitrijević. It was necessary to determine the age below which a criminally liable person should be segregated from adults; in some countries, that could be as high as 25.

52. Mr. AGUILAR said that what concerned him most was the term "juvenile offender", which in English referred specifically to criminal law. He agreed with Mr. Müllerson that it would be better not to refer to "juvenile offenders", but simply to "minor persons".

53. Miss CHANET said that article 10, paragraph 3, dealt only with the separation of juvenile and adult offenders; what the Committee should point out was that the age at which a person was no longer considered to be a juvenile offender was not indicated in the Covenant and was to be determined by each State. There was no need to reintroduce the concept of the age of criminal liability, which had been covered in the Committee's draft general comment on article 24. The problem was the use of the term "juvenile offender" in the English version, which referred to the age of criminal liability; a paraphrase should be found so that the term could be avoided.

54. Mr. AGUILAR suggested that if, on the other hand, the term "juvenile offenders" was to be retained in the English version, then the corresponding Spanish term should be "delincuentes juveniles" rather than "menores delincuentes".

55. Mr. SERRANO CALDERA said he agreed with Mr. Aguilar that the Spanish version of paragraph 13 was closer to the wording of the Covenant. He suggested that the seventh sentence of the paragraph should read as follows: "The Covenant does not indicate, for the purposes of article 10, paragraph 3, up to what age a prisoner shall be regarded as a juvenile offender."

56. The CHAIRMAN suggested that if the Committee wished to point out to States parties that article 10 did not specify the age of criminal liability, then the sentence should read: "The Covenant does not indicate the age of a juvenile."

57. Mr. DIMITRIJEVIĆ proposed that the seventh sentence should read: "The Covenant does not indicate the age of the juvenile persons concerned." In the following sentence, however, beginning with the words "While this is to be determined ...", the word "offenders" should be deleted and the words "or convicted" should be inserted after "accused", since a person did not become an offender merely by virtue of having been accused; he must first be convicted.

58. Mr. WENNERGREN said that he supported Mr. Dimitrijević's proposals, but felt that the sentence should read: "Article 10 does not ...", rather than "The Covenant does not ...".

59. Mr. AGUILAR said that he had difficulty understanding the relationship between article 6, paragraph 5, of the Covenant and article 10, paragraph 3; the former dealt with the age of criminal liability, while the latter dealt with the issue of detention, in other words, punishment. However, article 6, paragraph 5, stated clearly that the death penalty could not be imposed on persons under the age of 18.

60. Mr. WENNERGREN said that article 6, paragraph 5, meant that a person under the age of 18 who had been convicted of a crime should not receive the death penalty; it merely indicated the age below which capital punishment was not appropriate. He proposed that in paragraph 13 of the draft general comment, in the eighth sentence, the words "at least" should be added after the words "persons under the age of".

61. Mr. MÜLLERSON said that he did not fully agree with Mr. Aguilar. Article 6, paragraph 5, dealt with punishment for a crime, not with criminal liability. A 16-year-old could be convicted of murder under the Covenant, but could not be sentenced to death.

62. The CHAIRMAN suggested that Mr. Aguilar, Miss Chanet and Mr. Dimitrijević should consult informally with one another and should submit a final text to the Committee.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1137th MEETING

Held at Headquarters, New York,
on Monday, 6 April 1992 at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Draft general comment on article 10 (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1141/Add.1.

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The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 10 (continued) (CCPR/C/44/CRP.2)

1. Miss CHANET recalled that at the close of the previous meeting she and Messrs. Aguilar and Dimitrijevic had been invited by the Chairman to consult informally and submit to the Committee a final draft of paragraph 13.

2. Mr. AGUILAR, reporting on the proposed changes said that, first, in order to introduce the rest of the paragraph and to link the two cases covered by paragraphs 2 and 3 of article 10 to the whole of that article, the words "accused and offenders" in line 3, would be replaced by the words "persons deprived of their liberty"; second, the seventh sentence would read "Article 10 of the the Covenant does not indicate any limits of juvenile age."; third, the second half of the antepenultimate sentence would read as follows: "... the Committee is of the opinion that article 6, paragraph 5, suggests that all persons under the age of 18 be treated as juveniles, at least in matters relating to criminal justice"; lastly, "juvenile offenders" at the end of the next sentence would be changed to "juveniles".

3. The CHAIRMAN, referring to the first proposal, objected that "juvenile persons deprived of their liberty" covered more than just accused and offenders.

4. Mr. MÜLLERSON noted that article 10 (1) referred to all persons deprived of their liberty, including psychiatric patients, for instance, while paragraphs 2 and 3 dealt only with those charged with, or convicted of, a criminal offence. As the first sentence of paragraph 13 of the draft general comment could refer to all persons deprived of their liberty, he approved of the proposed wording.

5. The CHAIRMAN suggested that the end of the sentence should read "... the treatment accorded to juvenile persons deprived of their liberty and as to how their treatment is different from that of adults." A new second sentence would then add that paragraphs 2 and 3 contained specific provisions for matters relating to criminal justice.

6. Mr. DIMITRIJEVIC pointed out that it was beyond the Committee's mandate to offer such an interpretation of the Covenant, which said nothing of the separation of adults and juveniles in other than criminal cases. He suggested that, in order to avoid a protracted discussion of what was, after all, only an introductory sentence, the words of the Covenant itself should be used, namely, "accused juvenile persons and juvenile offenders".

7. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to that proposal.

8. It was so decided.

9. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to the proposed rewording of the seventh sentence.

10. It was so decided.

11. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to the proposed changes to the antepenultimate and penultimate sentences.

12. It was so decided.

13. The CHAIRMAN noted that Mrs. Higgins had suggested, for purposes of clarification, that the words "stricter than" in the second line of paragraph 8 should be deleted, and that paragraph 10, should begin as follows: "As to article 10, paragraph 3, which concerns convicted persons, ...". If he heard no objection, he would take it that the Committee agreed to the proposals.

14. It was so decided.

15. The draft general comment on article 10 was adopted, as amended.

The public meeting rose at 4 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1142nd MEETING

Held at Headquarters, New York,
on Tuesday, 7 April 1992, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Belgium

This record is subject to correction.

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Belgium (CCPR/C/57/Add.3)

1. At the invitation of the Chairman, Mr. Noterdaeme and Mr. Debrulle (Belgium) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented; rights of persons belonging to minorities (articles 2 (2) and (3) and 27 of the Covenant) (section I of the list of issues)

2. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Belgium, namely: (a) the status of the provisions of the Covenant that were not directly applicable or that had not yet been confirmed to be directly applicable, and the provisions, other than article 9, paragraph 2, which had been interpreted by the Court of Cassation to be directly applicable; (b) the extent to which the Covenant was applicable in the legislation of the Flemish, French and German communities; (c) any difficulties affecting the implementation of the institutional reforms mentioned in paragraphs 253 to 261 of the report (CCPR/C/57/Add.3).

3. Mr. DEBRULLE (Belgium), referring to section I (a), said that the provisions of the Covenant that were not directly applicable did not, in and of themselves, confer any right on individuals; they must be transferred to domestic law by means of an enactment which reflected their principles.

4. Other than article 9, paragraph 2, the provisions of the Covenant which the Court of Cassation had declared to be directly applicable were article 9, paragraph 3, and article 14, paragraphs 1, 2 and 7.

5. With regard to section I (b), international treaties which were introduced into domestic law in accordance with established procedures took precedence over national legislation in the areas to which they related. As the Covenant was an integral part of Belgian law and had binding force, those of its provisions which were directly applicable took precedence not only over national legislation, but also over the enactments of the Communities and Regions. The Communities and Regions were not authorized by any provision of domestic law to disregard the international commitments entered into by the Belgian State.

6. With regard to section I (c), there were four major difficulties, namely, the centrifugal nature of Belgian federalism; the country's bipolar structure; different concepts in the North and the South with regard to the operation of the language law; and the need to strike a balance, in the allocation of funds, between the requirements of national solidarity and those of regional and community autonomy.

(Mr. Debrulle, Belgium)

7. First, the Belgian State had gradually been transformed into a federal State through the establishment of Communities and Regions. Since the Communities and Regions had legislative powers equivalent to those of the national legislature, and since the decrees issued by the Communities and Regions had equal standing with national law, conflicts of jurisdiction sometimes arose; the resolution of such conflicts had been assigned to a special institution, the Court of Arbitration.

8. Secondly, as noted in paragraph 252 of the report, although Belgium was divided into four linguistic regions, three Communities and three Regions, the "Belgian problem" seemed to be the existence of two large communities, French-speaking and Dutch-speaking, in the same country. The problem was aggravated by several other factors, including the disparity in population size between the two communities (5.7 million Dutch-speaking as compared with 4 million French-speaking persons); political and philosophical homogeneity within each of the communities; the varying levels of economic development in the North and the South; the lack of a national political party; and a powerful process of international integration within the framework of the European Community.

9. The bipolar structure had led to the adoption of protective measures at the national level, on behalf of the French-speaking minority, and on behalf of the Dutch-speaking minority in the Brussels-Capital Region. As outlined in paragraphs 245 to 251 of the report, those measures included parity within the Council of Ministers; the requirement that laws affecting the basic interests of the linguistic groups should be passed "by community majority"; an "alarm-bell procedure", enabling either linguistic group to refer a draft law being debated by one of the legislative chambers to the Council of Ministers for an opinion; the requirement that the higher courts, such as the Court of Arbitration and the Court of Cassation must have an equal number of French-speaking and Dutch-speaking judges; and the provision for an equal number of French-speaking and Dutch-speaking senior officials in State and local public services.

10. Thirdly, the Dutch-speaking and French-speaking Communities had different concepts of the principles on which the rule of law should be based. For the Dutch-speaking Community, it was territorial law, in other words, the principle that all persons on Flemish soil must conform to the rules laid down by Flemish institutions, particularly with regard to territorial monolingualism. For the French-speaking Community, however, personal law was paramount; in other words, French institutions were competent to establish rules applicable tc all French-speaking persons throughout the country, whether in the North or in the South.

11. Those competing approaches had been reconciled through a number of compromises. For instance, recognition had been given to the law of the soil through the division of the country into four linguistic regions and the establishment of monolingualism within each of them. However, along the

(Mr. Debrulle, Belgium)

linguistic frontier between Flanders and Wallonia, there were 27 communes which had the "linguistic option" of asking the commune authorities to use a language other than the one of the region in which the commune was situated. Another compromise allowed persons of either linguistic group to vote in districts belonging to a linguistic region other than the one in which they lived.

12. Fourthly, as outlined in paragraph 260 of the report, the special Act of 1988 gave legal standing to economic and monetary union by making it a limitation on the authority of the Regions in economic matters. National solidarity took several forms: in respect of the Regions, it had been reflected, since 1990, in the payment of financial compensation to the least wealthy Region. Such compensation was based on a comparison between the average national income tax and the average per capita tax revenues in each Region; accordingly, the beneficiary Region might not always be the same. In respect of the Communities, national solidarity was reflected in the manner by which the educational system was funded, namely, through a value-added tax which was imputed according to the number of pupils in each of the two Communities.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section II of the list of issues)

13. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Belgium, namely: (a) any actual inequalities limiting the opportunities available to women and the result of measures taken to overcome those inequalities; and (b) restrictions on the rights of aliens as compared with those of citizens and any difficulties arising from the presence of migrant workers on Belgian soil.

14. Mr. DEBRULLE (Belgium), referring to section I (a), said that there was a continuing debate in his country over the use of quotas to increase the number of women in fields such as politics, business and trade-unionism, where they had traditionally been few. The fact that, for the first time, one fifth of the ministers in the current Government were women represented an achievement in that regard. Nevertheless, inequalities persisted in such areas as access to employment, remuneration, training and promotion, as well as working conditions. A 1990 law provided that men and women should be equally represented in the consultative bodies set up by the public authorities. Since the Economic Reorientation Act of 1978, other measures had been adopted in both public and private spheres.

15. With regard to the public sector, a Royal Decree of 27 February 1990 had introduced measures to promote equality of opportunity for men and women in the public services, notably through equal opportunity programmes designed to overcome the adverse impact on women of traditional social behaviour and to promote their participation in working life at all levels. Efforts were being made to encourage women to seek access to technical sectors and senior and

(Mr. Debrulle, Belgium)

managerial positions where they were badly underrepresented. With regard to recruitment, measures were being proposed to encourage women applicants by placing emphasis on equal opportunity recruitment procedures and avoiding any reference in job descriptions to characteristics usually associated with male applicants. More than 150 equal opportunity programmes were now under way in the public sector.

16. In the private sector, equal opportunity programmes were also being promoted with the aim of introducing recruitment procedures designed to achieve better balance between men and women, reviewing selection procedures, educating those in charge of recruitment in equal opportunities problems, training women for non-traditional jobs, providing return-to-work programmes after career interruptions, improving child-care facilities and encouraging paternity leave.

17. Turning to the question of the rights of aliens as compared to those of Belgian citizens, he cited article 128 of the Constitution, which stipulated that "any foreigner who is on Belgian territory enjoys the same protection granted to persons and property". Save in exceptional cases established by law, foreigners therefore enjoyed the same individual freedoms as Belgian citizens. However, there were restrictions on political activity by foreigners where such activity might pose a threat to public order or national security. In addition, the King was authorized to prohibit foreigners from living in certain communes, if it was deemed that an increase in the foreign population of those communes would be harmful to the public interest.

18. Foreigners legally resident in Belgium enjoyed the same civil rights as Belgian citizens, although, with regard to economic freedoms, prior authorization was required to engage in certain activities.

19. One restriction on the rights of foreigners was that they were not eligible to vote or stand for election in Belgium. However, in line with the provisions adopted at the European Council meeting, held at Maastricht in December 1991, it was intended to amend the Constitution to enable European Community citizens resident in Belgium to vote in local and European elections. In addition, the Council of Europe had recently opened for signature a convention designed to confer the right to vote and stand for election on any foreigner resident for five years in the host State concerned.

20. On the question of the difficulties arising from the presence of migrant workers in Belgium, he noted that the main problem concerned the integration of immigrant families who had settled permanently in the country and the need to ensure harmonious coexistence with the indigenous population. In order to gain an overview of the problem and act in an effective and concerted manner, the Government had established a Royal Commission on Immigration Policy in 1989, with the task of identifying appropriate measures, notably in the field of employment, housing and education, so as to provide a coordinated framework for the policies pursued in the sector by the various public authorities concerned.

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21. In its first two reports the Royal Commission had put forward a wealth of proposals based on the two key concepts of integration as a long-term goal and harmonious coexistence. The concept of integration was based on the goals of assimilation, in the sense of respect for the law of the land; promotion of opportunities, with particular reference to the emancipation of immigrant women; and mutual respect for cultural and religious diversity.

22. The aim was to promote mutual acceptance by the immigrant and indigenous communities by encouraging the active and coordinated involvement of minorities in the activities and objectives of the dominant group.

23. In order to achieve that goal and create a harmonious multicultural society, the Royal Commission advocated effective application of laws with regard to migrants, stressing that rights also involved duties; ending legal discrimination based on nationality; promoting equality of opportunity with regard to social and economic conditions; and combating de facto discrimination on grounds of ethnic origin.

24. To implement those principles, a wide range of measures was proposed. Efforts would be made to facilitate acquisition of Belgian nationality, notably by applying the principle of jus soli for third generation immigrants and enabling second generation immigrants whose parents had been legally resident in Belgium for more than 10 years to acquire Belgian nationality at their own or their parents' request. Language courses would be encouraged for migrant workers suffering long-term unemployment and for first generation immigrant women, who were frequently trapped in low-paid employment. Subsidies and incentives would be provided to help improve housing in problem areas and efforts would be made to tackle problems in urban areas, with special emphasis on the difficulties faced by young immigrants, by improving sports facilities, stepping up policing, and encouraging police recruitment of ethnic minorities with a view to improving relations between the police and young immigrants, which had previously been a source of tension. Efforts would be made to promote a more positive media image of immigrants and to encourage their employment and participation in journalism and broadcasting. Special measures would also be taken to deal with the problem of trafficking in women and prostitution, an area in which immigrant women in particular were highly vulnerable.

25. Miss CHANET, referring to the status of the Covenant in Belgian domestic law, noted that, despite the 1984 decision by the Court of Cassation, affirming that article 9, paragraph 2, of the Covenant produced direct effects in internal law, and subsequent decisions concerning other provisions, it was still maintained that certain articles of the Covenant were not directly applicable because they were not self-executing. She asked whether there had been any change in the position of the Belgian Government on the matter or was it still necessary to apply to the courts in order to invoke rights under the Covenant. Surely the State had a duty to apply those provisions directly in the same way as it did for the European Convention on Human Rights, since

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failure to do so was tantamount to restricting its citizens' rights. She wanted to know whether the Government considered itself bound by the Covenant when drawing up new legal provisions or whether it was guided rather by the European Convention on Human Rights. She also asked whether, following its decision of 1990, the Court of Arbitration was competent to apply Covenant articles directly.

26. With regard to remedies, she noted that articles 92 and 93 of the Belgian Constitution drew a distinction between civil and political rights, determining which court had jurisdiction for particular cases. She wondered how a citizen could determine whether he was seeking to uphold a civil or a political right when in invoking the provisions of, say, articles 27 or 13 of the Covenant.

27. She noted that, when ratifying the Covenant, Belgium had formulated reservations to articles 19, 21 and 22 to the effect that those articles should be interpreted in the same way as articles 10 and 11 of the European Convention on Human Rights. She requested clarification of the meaning of those reservations, since the provisions of the instruments in question were almost identical, and asked whether the Government intended to maintain them. She also asked whether Belgium intended to accede to the Optional Protocol.

28. Noting that the country's main institutions were dominated by the French-speaking and Dutch-speaking communities, she wondered how the German-speaking and other minorities were represented in bodies such as the Court of Cassation and the Council of Ministers and what measures were taken to protect their rights. Noting that a "linguistic option" existed enabling linguistic minorities to request use of their language in certain administrative dealings, she asked how that option could be exercised and what specific procedures were involved.

29. Finally, with reference to the rights of children under article 24 of the Covenant, the report referred to residual differences between the status of legitimate and natural children. She would welcome an explanation of what those differences were, since they did not appear to refer to rights of inheritance or recognition of paternity.

30. Mr. HERNDL said that, although the provisions of the Covenant formed part of Belgian internal law and were binding, under Belgian law it was for the court to decide whether a treaty provision was directly applicable. In other words, it appeared that only the court could rule on the self-executing nature of a provision of the Covenant. He suggested that the word "court" might be too restrictive and that it might be more appropriate to state that it was for the body that applied the Covenant - the administrative authority - to decide whether or not a particular provision was directly applicable.

31. Mr. SADI said that, in view of the fact that the Court of Cassation had affirmed that article 9 was directly applicable in Belgian internal law, he wondered whether that ruling was tantamount to stating that all other articles of the Covenant were also directly applicable.

32. Article 6 of the Belgian Constitution stated that "all Belgians are equal in the eyes of the law" and article 6b stated that "enjoyment of the rights and liberties to which Belgians are entitled must be ensured without discrimination". In referring to discrimination, most constitutions made specific reference to sex, race, colour, religion and so on, and he inquired why no such reference had been made in the Belgian constitution.

33. He inquired whether both men and women had equal rights with respect to transmission of citizenship to their children.

34. It appeared that Belgium made a distinction between second- and third-generation aliens, which would be a form of discrimination. He requested the Belgian delegation to comment on the Tunisian political and human rights activist who had been extradited from Belgium to Tunisia on 7 February 1992.

35. In some countries of northern Europe, prostitution had been legalized, and he wondered whether that was the case in Belgium.

36. Finally, he inquired whether the Belgian Government was taking any steps to assimilate the Flemish, French and German communities with a view to forging a single nation.

37. Mr. PRADO VALLEJO said that paragraph 7 of the report stated that the Court of Cassation had "affirmed the primacy of provisions of international treaties having direct effects in internal law over provisions of national origin", and he requested the Belgian delegation to clarify what was meant by the words "direct effects". He also wished to know the place and juridical impact of the Covenant in Belgian law. According to the report, the court would have to decide on the direct applicability of a specific provision of the Covenant.

38. Under article 2, paragraph 2, of the Covenant, States parties were obliged to take the necessary steps to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. He therefore did not understand why, even after its ratification of the Covenant, Belgium had enacted legislation that discriminated against foreigners on the grounds of nationality. Paragraph 144 of the report contained reference to legislation that restricted aliens' right to free choice of residence; paragraph 145 referred to a Royal Decree of 7 May 1985 that prohibited certain aliens from residing or establishing themselves in some communes in the greater Brussels area; and, paragraph 146 indicated that, under the Act of 28 June 1984, aliens other than nationals of the European

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Economic Community (EEC) could be prohibited from residing or establishing themselves in certain communes if the growth of the foreign population in such communes was deemed detrimental to the public interest. Such legislation seemed to run counter to the provisions of the Covenant, and he requested the Belgian delegation to provide clarification.

39. Mr. SERRANO CALDERA said that he wished to know the criteria applied in establishing the place of international treaties in the hierarchy of internal law. In his opinion, all international treaties should be equally applicable.

40. There seemed to be no general rule regarding the direct applicability of a treaty provision, since the court decided on the direct applicability of a treaty provision only in specific cases. He wished to know whether an action invoking a provision of the Covenant could be brought before an ordinary court or whether it had to be brought before the Court of Cassation.

41. Mr. MÜLLERSON said that, according to article 4 of the Constitution, no political rights of any kind could be granted to persons who were not Belgian. However, paragraphs 50 and 51 of the report contained a rather extensive discussion of a concept of civil and political rights that also involved certain economic and social rights. It was his understanding that the concept referred to in paragraph 239 was concerned only with political rights stricto sensu, namely, the rights guaranteed under article 25 of the Covenant.

42. Paragraph 145 referred to a Royal Decree that prohibited certain aliens from residing or establishing themselves in some communes in the greater Brussels area, and he requested the Belgian delegation to explain the meaning of "certain aliens".

43. He wished to know how the concept of minorities was understood in Belgian law and how it was applied in actual practice. He wondered whether, depending on the circumstances, a particular ethnic group could be considered to be either a majority or a minority, in which case it would require special protection under article 27 of the Covenant.

44. The Belgian delegation should provide information concerning the right of communes to conclude treaties. He asked whether any treaties had been concluded and, if so, on what subjects.

45. He requested information on how often the "alarm-bell procedure" had been used, both at the national level and the commune level.

46. According to paragraph 252 of the report, "the Court of Arbitration, the Court of Cassation and the Council of State must all have equal numbers of French-speaking and Dutch-speaking judges", and he wondered what the basis was for defining a person as Dutch-speaking or French-speaking, since there were most likely many people who were equally fluent in both languages.

47. Mr. WENNERGREN said that article 25 of the Belgian Constitution stated that "all powers stem from the nation". Other constitutions would have used "from the people", and he wondered whether there was a specific reason for the choice of wording, since in Belgium it might be necessary to refer to "the peoples". He noted, however, that article 79 and 80 of the Constitution contained references to "the Belgian people".

48. Mr. EL-SHAFEI, referring to paragraphs 5, 6 and 7 of the report, said that many countries had difficulties with the applicability of the Covenant and he commended Belgium on its candour. He wondered, however, how a State party could reconcile its obligations under article 2, paragraph 2, of the Covenant with its failure to apply, in toto, all the binding provisions of a treaty.

49. With regard to the applicability of the European Convention on Human Rights, he pointed out that the Convention incorporated the principles of the Covenant and he wondered why the Belgian authorities had reservations concerning certain articles of the Covenant, when they appeared to have no difficulty with the applicability of the European Convention.

50. Referring to the custom whereby certain groups of countries concluded arrangements among themselves which favoured their own citizens, he noted that that practice, while not in itself irregular, could lead to conflicts with international obligations, particularly those under article 26 and article 2, paragraph 1 of the Covenant.

51. Mr. NDIAYE said that the statement in the written reply under section I (a) of the list of issues, to the effect that the Belgian courts had sole competence for the interpretation of international treaties, was rather puzzling. He accepted that the courts would have such competence in the event of disputes, but believed that where there was no contention, the Ministry of Foreign Affairs or other executive authorities should be responsible for the interpretation of international treaties. As he understood it, Belgium drew a rigid distinction between self-executing provisions and those which were not directly applicable but if, like most other countries, it referred to the appropriate executive bodies for the interpretation of treaties, that distinction ceased to be so important, since, by interpreting treaties, the Belgian authorities could give indirect application to non-self-executing provisions.

52. With regard to section II (b), he asked what basis there was for the obligation placed on aliens to exercise political discretion in respect of their State of origin.

53. Mr. NOTERDAEME (Belgium) said, in reply to the questions asked regarding the position of the Covenant in Belgium's legal system, that there was, in essence, no difference between the status of the Covenant and that of the European Convention on Human Rights. The only difference was in the system for monitoring compliance with those instruments. Monitoring compliance with

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the Covenant was of a political nature and was exercised through the Committee, while control of the European Convention was carried out through the European Commission of Human Rights. The stringent procedures of the European Court of Human Rights, which had the power to instruct Belgium to change any provision of its legislation which was inconsistent with the Convention, caused Belgium to give particular attention to the European Convention, but he reiterated that there was no difference between the nature of the two instruments in Belgian law.

54. As stated in paragraph 7 of the report, the primacy of international law over national law was affirmed by a 1971 ruling by the Court of Cassation. The Belgian legislature, in accordance with the provisions of article 2, paragraph 2, of the Covenant, was therefore obliged to adapt internal legislation to the requirements of higher norms, namely, international law. If that was not done, the principle set forth in paragraph 5 of the report came into play, namely, that an international provision produced direct effects when it was clear and comprehensive, when it required the Belgian State either to refrain from action or to act in a specific manner and when it could be invoked as a source of law by individuals without need for any internal legislation for the purpose of implementation. In that context, and in response to the question concerning the difference between appeal judges, judges of first instance and judges of the Court of Cassation, he said that it was the responsibility of the judge to determine whether a provision might have been incorrectly incorporated into the law and to declare that the norm was sufficiently clear in itself to have direct effect.

55. That principle also underlay the division of authority between judges and the Department of Foreign Affairs or other similar administrative authorities. Any public authority could give views on whether or not a provision had a direct effect. The courts could, in turn, determine differently, that certain norms did have a direct effect, or were directly applicable or self-executing. Thus, while the Department of Foreign Affairs or other administrative authority gave an indication on the applicability of provisions before their ratification, in the final analysis it was up to the judge to determine that applicability and, if necessary, to overrule the decision of the legislature. Correspondingly, any new provisions in the law had to be consistent with the Covenant and the Court of Arbitration was also bound by the Covenant and its effects.

56. With reference to the distinction between civil and political rights, drawn in articles 92 and 93 of the Constitution, he said that the distinction in Belgian law between the two rights was very complicated and one aim of the current constitutional process was to simplify the issue, in order to clarify the rights of citizens and to help them protect those rights. The best criterion for determining whether a right was a political right was the need for the legislature to refer it to an administrative court, rather than to the ordinary courts.

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57. With reference to Belgium's reservation to articles 19, 21 and 22 of the Covenant, he explained that articles 10 and 11 of the European Convention on Human Rights accorded greater rights of exception than those in the Covenant and Belgium had therefore decided, in a spirit of caution, to refer to the more explicit rights of exception in the European Convention. He said that the issue would need to be carefully reviewed.

58. Turning to the ratification of the Optional Protocol, he said that the ratification procedure had been started three years previously; the administrative stage had been completed in October 1991 and the final reservations had been under consideration by the Government at the time of its fall in 1991. The procedure would have to be recommenced by the new Council of Ministers, but, as the preliminary, administrative stages had been completed, he hoped that the Protocol would be ratified before Belgium next appeared before the Committee. He preferred to take up the matter of the Second Optional Protocol during discussion of the issue of the death penalty.

59. On the question of protection of minorities, he said that the German community, which numbered only about 60,000, had its own administration and government, with a parliament headed by a three-man executive.

60. With reference to the protection of French minorities in the Flemish area and vice versa, he said that Belgium applied the principle of territorial monolingualism, whereby residents of Flanders were required to employ French and those of Wallonia, Flemish. An exception was represented by 27 border communes, which were known as "linguistic option" communes and in which the population had the right to receive services in a language other than the official language of the commune. The language arrangements in Belgium were established by law at the level of the National Parliament, the laws being passed by a two-thirds majority with a two-thirds quorum requirement. In view of those rigorous requirements, it was unlikely that any of the provisions of the language laws would be amended or rescinded.

61. With reference to recent legislation to promote equality of the sexes, he said that it was still too early to report on any results. One hundred and forty plans had been initiated in the public sector but progress had been interrupted by the fall of the Government which had instituted those measures. An assessment had been undertaken by the Department of Social Emancipation and would be resumed in due course.

62. Turning to the question of the Marckx ruling, he said that the Court of Arbitration and the European Court of Human Rights had criticized the Belgian legal authorities for failing to apply the Marckx ruling from the time it had been rendered, constraining Belgium to adapt its legislation accordingly. If it was decided to make the 1987 Act retroactive, it might be necessary to reopen numerous right of succession cases and to establish a compensation fund for those children who had been treated in a discriminatory fashion.

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63. In response to the question why the Belgian Constitution contemplated the equality of all citizens only in general terms, set out in articles 6 and 6 bis, without specifying particular parameters, he said that that approach had been adopted because international law prevailed over national law. Since the Covenant expressly prohibited discrimination on specific grounds, that prohibition was implicit in Belgium's internal legislation as part of its legislative heritage and there had been no need to amend the 1861 Constitution.

64. On the distinction drawn by the Belgian legislature between the second and third generations in the naturalization of aliens, he said that the rationale for that distinction was that the process of assimilation of an immigrant really only took effect with the third generation. He did not believe that any discrimination was involved: originally, it had been intended to accord naturalization at the second generation but, following discussions with immigrant representatives, it was decided to leave the initiative to the parents of third-generation immigrants, or, if the parents did not act, to the individual concerned to make the application at the appropriate stage.

65. With regard to the case of the Tunisian asylum-seeker, he said that the matter was still before the courts but that the decision of the Ministry of Justice had been based on the fact that the Tunisian citizen was a human rights militant and member of an organization considered to engage in political terrorism. The legislative authorities in Belgium which were currently considering the case seemed, however, not to share the views of the Ministry.

66. On the issue of prostitution, he confirmed that in Belgium it was considered that prostitution, when exercised by women who were properly innoculated and of majority age, was a legitimate occupation. It was felt, however, that the State had the right to discourage the practice, particularly by persons whose situation might render them vulnerable to exploitation by third parties.

67. On the question of intercommunal cooperation, he said that there were mechanisms of a legal and constitutional nature to foster cooperation between communities and regions, either by reconciling conflicting interests or through a legal conciliation procedure. A number of coordination and cooperation committees had been set up between the French, Dutch and German communities and language regions and the bilingual capital. In addition, there was a special department for legal cooperation under the Council of State, which ensured the proper dovetailing of communal legislation in matters of common concern.

68. Turning to the restrictions placed on areas where immigrants could settle, he conceded that the measures were highly contentious and possibly inconsistent with the provisions of the Covenant. The justification for the measures had been a concern to avoid provoking racist reactions against

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certain non-European immigrants, particularly in the light of housing problems in some areas. While the previous Government had intended not to renew those measures, the current administration was considering the adoption of new measures of a similar nature. He said that he would pass on the concerns and criticisms expressed by members of the Committee to his Government.

The meeting rose at 1.10 p.m.

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Forty-fourth session

SUMMARY RECORD OF THE 1143rd MEETING

Held at Headquarters, New York,
on Tuesday, 7 April 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Belgium (continued) (CCPR/C/57/Add.3)

1. At the invitation of the Chairman, Mr. Debrulle (Belgium) took a place at the Committee table.

2. The CHAIRMAN invited Mr. Debrulle to answer questions held over from sections I and II of the list of issues.

3. Mr. DEBRULLE (Belgium) said, referring to the "Lamy case", that the individual concerned was still in Belgium, and that the decision to refuse asylum had been suspended by order of the Council of State. The matter had not, as yet, been addressed in depth, however, and a final decision was still pending.

4. In answer to Mr. Mullerson, Dutch speakers represented an overall linguistic majority of 5.7 million as compared to 4 million French speakers. Measures of protection had been established for the French minority community, as a result. In the Brussels-Copital region, however, the majority of the population was French-speaking with about 15 per cent of the population living in a Dutch-speaking enclave. Some measures had none the less been taken to protect the use of the Dutch language because of imperialist tendencies perceived in the use of French.

5. Article 56 bis of the Consitution allowed the three communities to conclude treaties independently in areas of their own competence, for example, concerning cultural exchange or education. The question of whether economic and social regions had similar competence was currently under debate within the European Economic Community, since the association agreement had recognized only Member States, and not regions or communities.

6. For purposes of ensuring linguistic parity between judges, for instance, the decision regarding which linguistic group an individual came under was based on the language in which the individual had earned his or her diploma.

7. Mr. Wennergren had noted that some Constitutional provisions were no longer applied because of the communitarization and regionalization process. Most of those provisions dated back to 1831, and did not reflect the evolution which had taken place in concepts such as "the nation". It had become apparent over time that several "nations" existed within the Belgian State, for example.

8. Concerning the obligation of relative discretion imposed on aliens, he said that the purpose of that obligation, which prohibited aliens from engaging in activities detrimental to relations between Belgium and their home country, was to maintain good relations with other countries.

Right to life, liberty and security of the person, and treatment of prisoners and other detainees (articles 6, 7, 8, 9 and 10 of the Covenant) (section III of the list of issues)

Freedom of movement and expulsion of aliens (arts. 12 and 13 of the Covenant) (sect. IV of the list of issues)

9. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Belgium, namely: (a) the current situation in respect of abolition of the death penalty and ratification of the Second Optional Protocol; (b) rules and regulations governing the use of firearms by the police and security forces, violations of those rules, if any, and measures taken to prevent their recurrence; (c) futher information on the Protection of Young Persons Act of 8 April 1965; (d) information on detention in institutions other than prisons and for reasons other than crimes; (e) maximum length of pre-trial detention; (f) remedies available to persons claiming wrongful detention and effectiveness thereof; (g) time-limit for informing an individual's lawyer or family after arrest; (h) complaints during the period under review of torture or cruel, inhuman or degrading treatment of prisoners or detainees, if any, and convictions on such charges and remedies provided; (i) procedures established for the regular review of prison conditions; and (j) compliance with United Nations Standard Minimum Rules for the Treatment of Prisoners, and availability of relevent regulations and directives to prisoners in all official languages.

10. He then read out section IV of the list of issues, namely: (a) information on the status of the Royal Decree of 7 May 1985 and of the appeal lodged against it; (b) whether an appeal against an expulsion order had suspensive effect; and (c) information on the condition and status of persons received at Centre 127 at Zaventem airport.

11. Mr. DEBRULLE (Belgium), referring to section III (a), said that a bill had been reintroduced before the legislature expressly abolishing the death penalty, except in time of war for the most serious military crimes, echoing the language of article 2 of the Second Optional Protocol. The military criminal code had also been amended to maintain the death penalty only for the most serious offences in time of war. The Ministry of Justice was in the process of drafting a law adopting the Second Optional Protocol of the Covenant and the sixth protocol to the European Convention on Human Rights, since domestic legislation must be amended in order to permit their ratification.

12. Turning to section III (b), he said that the use of firearms by police and security forces was governed by the law of 2 December 1957 on the police force and by article 257 of the criminal code. The criteria for their legitimate use were that such use must be legal, absolutely necessary due to lack of another course of action, strictly limited to the extent necessary to carry out the mission, and appropriate, without posing a danger to a third party. Absolute necessity was the basic principle governing any use of firearms.

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13. The principle of self-defence based on article 416 of the criminal code required, in addition to absolute necessity, that conditions of serious aggression, present or imminent aggression and defence appropriate to the type and seriousness of the aggression must be met. The principle of lawful protection allowed recourse to arms in the protection of persons or property by the police if no other means of defence was possible. Use of arms to disperse hostile crowds and for purposes of riot control could be ordered by the officer in charge of maintaining public order or, in an emergency, the ranking officer present or the administrative authority, if they deemed it necessary and had already attempted less severe measures, including the use of force. In such a case, the public must be so informed according to a formalized procedure.

14. A bill had been introduced before the legislature in June 1991 to coordinate the functions of the various police forces and to reform the above-mentioned laws by providing uniform regulations on the use of firearms. It dealt with the use of force and the use of firearms. The use of force must follow the principles of legality, proportionality and timeliness. The police had a duty to seek the least violent form of intervention possible before resorting to the use of firearms. Firearms could be used only in cases of absolute necessity but, under the bill, that was understood to include the supposition of serious crime, such as violent offences, and cases where the police could reasonably suspect that an individual was in possession of a firearm and intended to use it.

15. There had been 104 instances of use of firearms by the police in 1989, 83 in 1990, and 75 in 1991, resulting in 9 disciplinary actions in 1989, 12 in 1990 and 5 in 1991. The police force numbered some 15,000 officers.

16. With regard to section III (c), both the Dutch and French communities had recently issued decrees abrogating article 53 of the Protection of Young Persons Act of 1965, stipulating that it could be applied only to minors charged with delinquency. A bill had been drawn up outlining the proposed changes. They included restriction of the Act to minors over 14 years of age charged with committing an act punishable by one year in a correctional institution, reduction of the time allowed for filing an appeal and for rendering an appeal decision, provision of legal assistance and the stipulation that the measure could be applied only once during the same procedure. The bill also contained several changes in procedural guarantees. A lawyer would be assigned to protect the interests of the young person immediately upon referral to the juvenile court. The minor must be heard by the judge before any measure could be taken, whether interim or final, and grounds for an interim measure must be given. The parties and their counsel would have access to the case file during the preparatory period, which would be limited to three months. Appeals must be heard within 15 days.

17. Referring to section III (d), he said that a new law on the protection of the mentally ill made it impossible for a person to be held for observation or

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hospitalized without a judicial decision rendered following a hearing in which the patients right to defend himself was fully guaranteed. The new law was based on the principle that freedom should be the rule and its restriction the exception. Any decision to place an individual under observation either in his home or in a hospital, or to continue hospitalization, must be taken by a justice of the peace, and the individual must be assisted by a lawyer and, if desired, by a psychiatrist. Decisions in such cases could not be opposed, but could be appealed before a panel of three judges. The law guaranteed to any mentally ill person the respect of his basic human rights.

18. In answer to section III (e), he said that the new Act on pre-trial detention of 2 July 1990 was intended to guarantee the individual's basic rights, while at the same time improving the administration of justice. By raising from six months to one year the minimum sentence where pre-trial detention was warranted, eliminating mandatory detention for certain types of crimes and instituting criteria for pre-trial detention based on absolute necessity for reasons of public safety, it emphasized the exceptional nature of the measure. Guarantees of individual rights had been improved through rigorous definition of conditions of arrest, more detailed arrest and hearing records, the provision to individuals held in pre-trial detention of full copies of warrants and records of police questioning, free access to a lawyer even for a suspect held incommunicado, the right to see files before the first appearance before a judge, a review of the proceedings before any subsequent appearances, and the right to a public hearing after six months to a year of detention. Alternatives to pre-trial detention had also been provided.

19. However, no definite time-limit had been established for pre-trial detention. The legislature believed that the new Act contained adequate guarantees to reduce the use of that practice to a minimum. Furthermore, article 5.3 of the European Convention on Human Rights applied fully in such cases.

20. With regard to compensation for wrongful detention, mentioned in section III (f), paragraphs 111 to 114 of the report discussed the matter in detail. About 60 cases a year were brought before the Minister of Justice, and the number was growing. Compensation was awarded in about half of those cases, and about one third of the decisions were appealed.

21. In answer to section III (g), a detainee could contact his family in writing or by telephone immediately following arrest, unless he was being held incommunicado. Even then, he could contact his lawyer. There was no set procedure requiring a detainee's family or lawyer to be informed of his arrest; the initiative had to come from the detainee himself.

22. Referring to section III (h), he said that no complaints of torture had been received during the reporting period, but some complaints of ill-treatment had been made with regard to maximum security prisons and solitary confinement. The complainants had maintained that such isolation

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measures were seriously detrimental to their health. The State had justified those measures on the grounds that directors of prisons had the right to take such restrictive measures as circumstances and prudence required, and that Council of Europe draft recommendations required separation of dangerous prisoners. The resulting court decisions had agreed with the State that magistrates could not rule on the appropriateness of measures taken in response to individual circumstances, but only on the legality of the measures, considering the reasons for detention. The practice had been criticized, however, since maximum security or solitary confinement should be viewed as an exception to the ordinary prison regime, to which all prisoners had the basic right. The matter was currently before the court of appeal, and a final decision was still pending.

23. Referring to section III (i), he said that detainees could appeal to the authorities of the penitentiary system, beginning with the Director of Prisons and, if necessary, going as far as the Minister of Justice. Appeal was also possible to the prison administration, notably the Administrative Commission and the authority referred to as the Commissioner of the Month. A third recourse procedure was to courts with summary jurisdiction. In addition to those remedies, periodic visits to prisons by a monitoring committee were currently possible following the recent ratification by Belgium of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

24. Concerning section III (j), he said that on the whole, the United Nations Standard Minimum Rules for the Treatment of Prisoners were respected. They were readily available in French and in Dutch to all persons within the penitentiary system.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section IV of the list of issues)

25. The CHAIRMAN read out section IV of the list of issues, namely: (a) information on the status of the Royal Decree of 7 May 1985 and of the appeal lodged against it (para. 145 of the report); (b) whether an appeal against an expulsion order had suspensive effect; and (c) information on the conditions and status of persons received at Centre 127 (Reception Centre) at Zaventem airport.

26. Mr. DEBRULLE (Belgium) said that he had already addressed section IV (a) in a previous reply. Concerning section IV (b), he pointed out that there were several categories of expulsion depending on the status of the alien in question. The successive recourses available were appeals to the Minister of Justice for review of the expulsion order; appeals to the Commissioner-General for Refugees and Stateless Persons; recourse to the presiding judge of the court of first instance; recourse to a Standing Commission established to hear such appeals; and, finally, recourse to the Council of State. All remedies had suspensive effect in respect of the order of expulsion and were based on

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the provisions of the European Convention of Human Rights and the International Covenant on Civil and Political Rights that persons in such situations must have effective remedies.

27. New rules governing the expulsion of aliens had recently been introduced. They followed the jurisprudence established by the European Court of Justice that the imprisonment and subsequent expulsion of aliens convicted of serious crimes constituted double jeopardy, and also contained provisions against the separation of families.

28. Referring to section IV (c), he said that the Decree of 14 July 1987 provided that asylum-seekers without valid travel documents were no longer authorized to enter Belgium as of right. Such persons were confined to the transit zone at Zaventem airport known as Centre 127 while their requests were being processed. The Belgian courts had found that such confinement did not constitute administrative or penal detention, since the aliens in question could leave for a destination abroad at any time they wished. On the other hand, the Committee against Torture of the Council of Europe had expressed the opinion that the transit zones were detention areas since aliens were, for the most part, destitute and therefore unable to exercise the right to depart for a foreign destination. However, the Court of Appeal had recently reaffirmed that such confinement for periods of under two months did not constitute administrative or penal detention within the meaning of the Act of 15 December 1980.

29. Mr. SADI asked what the Government was doing to address the affirmative dimensions of the right to life, such as the right to health, the elimination of epidemics, and pollution-related issues.

30. Miss CHANET sought clarification of the rules under which a detainee was required to be brought before a judge within a certain period of time, the manner in which monthly monitoring of provisional detention was carried out and whether detainees had the right to ask for a lawyer as soon as they were arrested. She also wondered whether medical examinations were carried out by independent doctors. Finally, she would welcome further information on the practice of solitary confinement of detainees.

31. On the matter of persons held in transit zones, article 9 (4) of the Covenant provided that they should have the right of appeal against what was, in fact, detention. It was unrealistic to say that they could leave for their own countries at any time.

32. Mr. WENNERGREN wished to know the position of Belgian law on the matter of organ transplants from aborted foetuses.

33. Mr. DEBRULLE (Belgium), replying to Mr. Sadi, said that Western societies had traditionally distinguished between civil and political rights on the one hand and social and economic rights, on the other. He cited a case which had

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been brought before the European Court of Human Rights on behalf of certain Belgian families who claimed that denial of electricity - their electricity had been cut off because they had not paid their bills - constituted inhuman and degrading treatment, and said that the Court had declined to hear the case.

34. Belgium had adopted the more restrictive interpretation of the right to life. However, every effort was being made to protect people's health, provide preventive treatment of the acquired immune deficiency syndrome (AIDS) and to protect the so-called third generation of human rights, such as the right to a healthy environment.

35. The rules governing the conditions of preventive detention had recently been changed and it would take some time before the results of the new provisions could be evaluated. In general terms, a Chamber of Council was required to determine, within five days of a person's detention, whether the grounds for detention still existed. Detainees also had remedies of appeal at each phase of their detention; and he had the right to request that a lawyer be present. The affiliation of doctors who performed medical examinations with the penitentiary establishments had been criticized and corrective steps were being taken.

36. Solitary confinement was intended to isolate a detainee. During that period he was allowed contact only with his lawyer. Finally, individuals held in transit zones could have recourse to the remedies available to them at any time during their confinement.

37. He did not have information concerning organ transplants from aborted foetuses, but would obtain it and make it available to the Committee.

Right to a fair trial (article 14 of the Covenant) (section V of the list of issues)

38. The CHAIRMAN read out section V of the list of issues, namely:
(a) procedures for the appointment and removal of members of the judiciary;
(b) information on the organization and functioning of the Belgian Bar and on the availability of legal assistance to criminal defendants; and
(c) clarification of the legal aid system in Belgium.

39. Mr. DEBRULLE (Belgium), referring to section V (a), said that appointments were usually made by the King based on two lists drawn up by an elected body and by the competent branch of the judiciary respectively. Judges were appointed for life and could be removed only with their own consent or by decision of the Court of Appeals.

40. Turning to section V (b), he explained that the legal profession was independent and private in Belgium. Attorneys must be Belgians or nationals of a member State of the European Economic Community. They must possess a law degree from a Belgian university, take an oath and be a member of the Bar.

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Attorneys could not simultaneously act as judges or notaries, could not engage in business or industry and could not be involved in publicly or privately remunerated activities. A Council was elected annually by each Bar Association to administer the Association and to ensure that its traditions were maintained. A similar Council functioned at the national level, whose main purpose was to safeguard the professional interests of attorneys.

41. Concerning section V (c), indigents could ask that an attorney be appointed to defend them. Because of the low pay such work, however, was usually entrusted to trainee attorneys. The Government proposed to provide other means of assistance through social assistance committees and the payment of subsidies to attorneys who did pro bono work for indigent clients.

42. Turning to section VI (a), he said that, as a general principle, preventive action to restrict freedom of expression was not permissible under Belgian law. However, a posteriori judicial proceedings could be taken under the civil or legal codes to redress damage to a person's honour or good name and to punish incitement to criminal conduct or acts based on racism or xenophobia.

43. Article 18 of the Constitution expressly prohibited censorship of the press, a term that was being broadened to cover all modern media of communication. Recently, however, there had been a spate of petitions to interim relief judges for prevention of the publication or broadcasting of material viewed as damaging to natural or juridical persons. There were differences of opinion regarding the applicability of the constitutional ban on censorship to the judiciary. There were two schools of thought. According to the first, the prohibition did not apply to magistrates. The purpose of the constitutional provision was to afford protection against intervention by the executive or legislative branches, whereas the judiciary was the traditional protector of civil liberties. The second school of thought denied the existence of any such derogation on behalf of the judiciary. Legal precedent seemed to favour a middle position. Magistrates tended to exercise great caution, seeking to strike a balance between all interests involved and bearing in mind the pre-eminence of freedom of expression. In practice, petitions were granted only where the rights of a third party had been manifestly violated.

44. Referring to section VI (b) of the list of issues, he said that article 35 of the Act of 3 July 1978 concerning employment contracts defined "serious reasons" as any serious transgression that immediately and definitively rendered future collaboration between the employer and employee impossible.

45. Trade-union and staff representatives were protected against dismissal for reasons related to their status as office-holders by Collective Labour Agreement No. 5 of 24 May 1971 and the Act of 19 March 1991 respectively. The conduct of employees thus protected was to be judged in the same way as that

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of their colleagues and the "serious reasons" could not be linked to the existence or discharge of official duties as trade union or staff representatives. However, prior to the Act of 19 March 1991 a distinction had been drawn in practice between the normal discharge of official duties and abuses perpetrated in the exercise of such duties.

46. Turning to section VII (a) of the list of issues, he said that the custody of children in the event of separation or divorce was awarded either on the basis of agreement between the parents or on the basis of a judicial decision. Decisions regarding custody could be reviewed by a juvenile magistrate at the request of any person vested with parental authority or pursuant to a submission by the Public Prosecutor's Office if the interests of the child so required.

47. The criteria which the courts took into account in the event that both parents requested custody, were availability of the parent, age (mothers being generally awarded custody of infants) and, above all, the best interest of the child, bearing in mind, from a certain age onwards, the child's own preference.

48. Although parents tended to favour joint custody (where the child stayed alternately with one parent and with the other) judicial precedents were divided. Those who opposed it argued that while physical custody could be shared, under Belgian law legal custody could not. That argument was not an obstacle to joint custody, provided that a distinction was drawn between physical custody and legal custody.

49. When custody was awarded to one parent, the other retained the right to maintain personal relations with the child, including the right to monitor his or her upbringing and education.

50. All such rights were subject to judicial control if the child's physical or mental health were considered to be in jeopardy.

51. With regard to section VII (b) of the list of issues, he said that Convention No. 138 on the minimum working age prohibited the employment of children who had not completed their compulsory schooling save in areas related to their education and training.

52. Underground work in the mining industry, physically taxing work and activities that might jeopardize the health or pose a threat to the morals of minors were also prohibited to young people under the age of 18. Young people were also protected by restrictions on night work, Sunday work and professional sports contracts.

53. Mr. SERRANO CALDERA, referring to the two schools of thought on the possibility of preventive judicial intervention to restrict freedom of expression, asked whether any legal action had been taken in that connection in the Constitutional Court or whether judgements had so far been based on mere interpretations of article 18 without constitutional status.

(Mr. Serrano Caldera)

54. With regard to trade union participation in the National Labour Council, he drew attention to a recommendation by the ILO Commission of Experts on the implementation of conventions and recommendations regarding Belgium's compliance with ILO International Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize. There had been some doubt concerning the access of professional associations to the National Labour Council. In particular, objective criteria had not been adopted to regulate access thereto and the National Confederation of Professional Personnel had not been allocated a seat on the Council. He wished to know what criteria of access were currently being applied, whether legislation existed to protect that right and what action had been taken to implement the ILO recommendation.

55. Mr. ANDO inquired whether the State had a monopoly on television broadcasting and who exercised control over the system.

56. Mr. WENNERGREN noted that article 19 of the Belgian Constitution concerning freedom of assembly contained restrictions with respect to outdoor meetings, which were subject to police laws. Moreover, Belgium's initial report had mentioned a circular issued on 7 October 1985 on the coordination of the maintenance of law and order at large gatherings. A question concerning restrictions on freedom of assembly had been asked on that occasion but no reply had yet been received. He was not sure whether Belgian law on peaceful assembly was compatible with article 21 of the Covenant but in view of the complexity of the legislation he felt that it might be desirable to postpone further consideration of the matter until the third periodic report.

57. Mr. NDIAYE asked whether the existence of a monarchy in Belgium had any implications for the principle of equal access to public office, for example in the form of privileged treatment for the aristocracy.

58. Mr. DEBRULLE (Belgium) said that he was not familiar with the ILO provisions referred to by Mr. Serrano Caldera but would look into the matter of possible incompatibility and would respond in writing. In general, the concept of trade union representation in Belgian law was a very broad one and hence the established criterion of national representation, which in turn raised the issue of possibly insufficient representation of professional personnel.

59. Belgium's own public channels in both Flemish and French were State-owned and operated; but it was not an absolute monopoly because there were several French and Flemish private channels also in operation. In theory, advertisements could not be broadcast on public channels, but those regulations were not observed.

60. His Government would carefully compare article 19 of the Constitution with article 22 of the Covenant and study the question of incompatibility.

(Mr. Debrulle, Belgium)

61. As to the issue of access to government employment, even though a few public functions were reserved to the royal family and a Senate seat was always reserved for the brother of the King, he did not believe that such royal privileges interfered in any way with full access by all citizens to public employment.

62. The CHAIRMAN invited members of the Committee to make general comments on the report.

63. Mr. ANDO expressed appreciation for the very detailed report supplemented by the annex on legislation passed in the interim and for the excellent replies, which the Committee had come to expect from the Belgian delegation. The human rights problems in Belgium were few, but he had three concerns. There was the relationship between the European Convention on Human Rights and the Covenant: while they often duplicated each other, article 14 of the Covenant was much more detailed and article 26 was unique, and both should have a place in Belgian law. Secondly, there was a jurisdictional problem between the national and the community Governments, with some national legislation being applied by the communities; all national legislation should be the responsibility of the central Government, which should ensure compliance by the communities. Lastly, the Government might want to reconsider its reservations to the Covenant, particularly those in respect of article 10 and article 14 (5), which seemed unnecessary.

64. Mr. NDIAYE, noting the excellence of the report and the competence and readiness of the delegation to answer questions, observed that the incompatibility of the obligation to vote with the freedom of conscience guaranteed by the Covenant, a view with which the Government took issue in paragraph 238 of the report, was not in fact a position of the Committee as a whole but only of some of its members. He himself, for instance, did not see that as an incompatibility. The report as a whole reflected the status of human rights in Belgium, and showed that it did not have problems on that score.

65. Mr. PRADO VALLEJO observed that the report was exemplary, and the clear and objective answers had made for a constructive dialogue. Two basic concerns remained, however. The Covenant could not be invoked or applied directly under Belgian law, a legal gap which was currently filled by judges who applied the law, but which should in future be remedied. Also, certain laws restricting the stay of immigrants, which had been adopted after the Covenant had entered into force and were incompatible with it since they discriminated against individuals on grounds of nationality, should be brought into line with the Covenant.

66. Mr. WENNERGREN said that he now had a better understanding of what was a very complicated legal system indeed, especially in the interaction between federal, community and constitutional legislation. The clear impression was that the Belgian system was largely in compliance with the Covenant. He hoped

(Mr. Wennergren)

that the next report would deal more fully with certain points, such as the discrimination against aliens just referred to, for which reasonable and objective grounds in the public interest might be adduced. His own country had arrived at a similar legal solution to that real problem. It was true that the Committee as a whole did not consider the obligation to vote as a violation of freedom of conscience, although he himself still considered it to be so. He had, on the other hand, been pleased to learn more about the freedom of assembly in Belgium and its compatibility with article 21 of the Covenant.

67. Mr. MAVROMMATIS observed that the kind of elaborate federalism developed in the Belgian system would probably provide an answer to the problem of fragmentation of countries, currently taking place, for instance, in Eastern Europe. While there seemed to be different degrees of protection in Belgium depending on where one lived, there was nevertheless a healthy, deeply rooted respect for human rights in the country. The very good report and the excellent answers left very little to be desired. With regard to paragraph 238 of the report, he said that voting was compulsory in his own country also and he did not believe Belgium should change its system.

68. Mr. HERNDL said that the excellent report and the ensuing discussion made it clear that Belgium respected human rights. The Committee could make a few recommendations, but there were no real problems. A very complex legal Community system governed the treatment of language groups, but it served Belgium's needs and was in compliance with article 27 of the Covenant. Since reservations, in principle, suggested incompatibility with the Covenant, he said that the time had perhaps come for Belgium to review its list of reservations; some of them had been overtaken by events and others had been prompted by an overscrupulous desire to avoid problems of incompatibility.

69. Mr. SERRANO CALDERA, praising the quality of the report and the written and especially oral answers, observed that Belgium had no real human rights problems. The dialogue had instead focused in depth on the constitutional and legal system and on the particularities of the country, especially the "centrifugal" trend from a central government to a federal structure and the bi-polarity of the two French and Flemish Communities.

70. He still had a few minor concerns, one of which related to the applicability of the Covenant and the two types of laws applying it either directly or indirectly. Also, Belgian legislation needed to be harmonized with the Covenant in a few instances. The lack of an overall judicial authority over preventive detention could lead to unequal treatment. Lastly, the Government should review its reservations to the Covenant.

71. Miss CHANET said that the situation in Belgium was particularly complex institutionally but that she believed human rights were safeguarded. She agreed that the Government should review its reservations to the Covenant and consider ratifying the Optional Protocol. Some other problems remained, such

(Miss Chanet)

as the weight of cultural bias against women, which was not unique to Belgium and which it had recognized. There was also the question of the situation of the many immigrants who sought to settle in Belgium and the Government should, particularly in view of a recent decree by the European Court of Human Rights, remedy any violations of their privacy.

72. She herself was not satisfied with the explanations given on the question of the direct application of laws and the obligatory recourse, as an intermediate step, to the courts for rulings on whether or not a law was self-executing. She did not see how the courts could settle all such problems because, in Belgium as in France, judges could not hand down conflict judgements. Consequently, the use of judicial authority as an intermediary did not seem to be in compliance with article 2 of the Covenant and was likely to create a legal loophole. Whenever there was a doubt as to whether a particular provision was self-executing, the Government should pass a law on the matter. That would be the logical conclusion of the Government's ongoing consideration of the issue.

73. With regard to police custody, admittedly a brief administrative phase of detention, it was none the less a period during which there was no access to counsel or to impartial doctors, which had given rise to certain incidents. Her impression, however, was that the law was evolving in that area. There was no question that Belgium was scrupulously endeavouring to respect the Covenant and basic human rights.

74. The CHAIRMAN said that, like the other members of the Committee, he was satisfied with the human rights situation in Belgium and also with regard to the primacy of the Covenant in Belgian law, which had been clarified in the oral replies. He was certain that the Government would study the Committee's comments and that its reaction would be reflected in the third periodic report, which was due in 1994.

75. Mr. DEBRULLE (Belgium) said that he would certainly report the various comments of the Committee to his Government and hoped that its next periodic report would show that it had fulfilled all the commitments the Committee expected of it.

The meeting rose at 6.10 p.m.

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Forty-fourth session

SUMMARY RECORD OF THE 1144th MEETING

Held at Headquarters, New York,
on Wednesday, 8 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR (Chairman)

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The meeting was called to order at 10.35 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitic, Mr. Djokic, Mr. Strugar and Mr. Zupanjevac (Yugoslavia) took places at the Committee table.

2. Mr. MITIC (Yugoslavia) said that the difficulties currently experienced by Yugoslavia adversely affected the implementation of human rights provisions, and in some parts of the country even the fundamental human right to life was under threat.

3. Although Yugoslavia had not always been governed fully in accordance with the rule of law, it had nevertheless set an example to the other so-called socialist countries in the observance of human rights at both international and national levels and had followed a relatively liberal concept of human rights. Yugoslavia had initiated the drafting of the declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities and had contributed to the codification of other important rights. The observance of human rights in Yugoslavia had been assisted by its system of constitutional courts, through which thousands of private citizens had been able to challenge the legality of certain general provisions in Yugoslav law, which had subsequently been declared null and void.

4. Fundamental changes had been made to the constitutional and legal systems of the Yugoslav Federation during the reporting period which were conducive to the introduction of the multi-party system and market economy and to the full implementation of European standards in the field of human rights. Those changes included the explicit prohibition of discrimination on the basis of political belief and the repeal of various other provisions of a discriminatory nature, thereby enhancing conditions for the exercise and protection of human rights.

5. Problems in the exercise and protection of human rights were due to the erosion of the constitutional and legal system occasioned by the unconstitutional acts of secessionist republics and by the upsurge of nationalism throughout Yugoslavia, leading to outbreaks of national and religious hatred and armed conflicts.

6. According to article 1 of the current Constitution, Yugoslavia was a federal State of voluntarily united nations and their republics. Article 5 of the Constitution stipulated that the territory of Yugoslavia was a single unified whole and that its borders could not be altered without the consent of all the republics and autonomous provinces. Under the provisions of article 206, republican and provincial constitutions could not be contrary to

(Mr. Mitic, Yugoslavia)

the Constitution of Yugoslavia. Precise provisions on the modalities for amending the Constitution of Yugoslavia were laid down in article 398 of the Constitution.

7. The authorities of the Republics of Slovenia and Croatia had violated those constitutional provisions through their unilateral decisions to proclaim independence and secede from Yugoslavia. Those unilateral acts had been reviewed by the Federation's highest legislative authorities, namely, the Federal Chamber of the Assembly of the Socialist Federal Republic of Yugoslavia, which had declared that it recognized neither the internal nor the international legitimacy of the decision by the Assembly of Slovenia to secede and had invited that Assembly to enter into dialogue on the regulation of relations; the Government of Yugoslavia had declared those acts illegal and unlawful and their consequences invalid, while reaffirming the right of each nation to self-determination, provided that it was not exercised in a manner contrary to the principles of democracy; the Presidency of Yugoslavia, which had declared those acts unconstitutional and unlawful; and the Constitutional Court of Yugoslavia, which had proclaimed those acts unconstitutional, since the right of nations to self-determination, including the right to secession, required the regulation of issues and procedures which affected not only the republic in question, but all the constituent republics of Yugoslavia as their common State.

8. Those acts of secession ignored two particularly sensitive questions: the rights of other peoples to self-determination, which were threatened by such acts, and the status of the borders of the republics concerned. The population of Yugoslavia and its constituent republics was multinational in composition, and the secession of certain republics could cause members of the same constituent nation, currently citizens of a single State, to become the citizens of different States. In particular, he questioned whether the Republic of Croatia was entitled to force Serbs who had previously lived with their parent nation in a single State, the Federation of Yugoslavia, to become citizens of a separate, independent State. The right to self-determination implied the self-determination of nations, and not of federal Republics.

9. Similarly, the administrative borders between the various Yugoslav republics could not automatically become international State borders as a consequence of the implementation of the right to self-determination of nations. Those borders were not internationally recognized nor based on any internal legal act, but were merely administrative boundaries between parts of a single State.

10. The armed conflict in Slovenia, caused by the forcible take-over by the Slovenian authorities of Yugoslav border-posts and custom services, and the war in Croatia, provoked by the persecution of Serbs, had demonstrated that the use of force and recourse to unconstitutional acts solved nothing and led only to severe human losses and damage to property, while widening the gap between the different peoples and increasing their mutual mistrust.

(Mr. Mitic, Yugoslavia)

11. The withdrawal of Slovenian, Croatian and Macedonian representatives had led to the paralysis of the federal legislative bodies, preventing the adoption of constitutional amendments and of other provisions which required the approval of all republics.

12. He expressed regret that some foreign States had openly supported secession through violence, and had recognized those republics as independent States, in defiance of the conclusion of the European Community that the issue of recognition would be discussed only after the forthcoming Conference on Yugoslavia and contrary to requests by the Secretary-General of the United Nations and his personal representative on Yugoslavia.

13. Despite the severe difficulties in its path, the Yugoslav Government had made every effort to fulfil its international obligations, and it hoped that the Conference on Yugoslavia would resolve the Yugoslav crisis through democratic and peaceful means. The Republics of Montenegro and Serbia, which accounted for half the territory and population of the Yugoslav Federation, had been trying, in cooperation with the federal authorities, to redefine a new federation of Yugoslavia, open to all other Yugoslav peoples and republics wishing to accede to it. Alongside the Conference on Yugoslavia, preparations were under way for the holding of new federal elections and the adoption of a new constitution, modelled on the constitutions of 27 democratic countries. In 1991, as an interim measure, the Yugoslav parliament, acting in accordance with the current, amended constitution, had set up a Special Standing Committee on the rights and freedoms of the individual and citizen, to ensure that human rights formed one of the basic elements of any new constitutional and legal system.

14. The rights of national minorities had been particularly adversely affected by the deterioration of the situation in Yugoslavia and by failure to implement the rule of law. Yugoslavia could not, however, be considered as a bad example in the field of minority rights, since its achievements in that area had far exceeded world and European standards. Under the 1974 Constitution, national minorities enjoyed more extensive rights than those enjoyed by national minorities anywhere else in the world. Even when the Constitution of the Republic of Serbia had revoked some of the authority which made the autonomous provinces of Vojvodina and Kosovo de facto States, none of the minority rights had been modified or reduced.

15. Subsequent to those measures, ethnic Albanians, acting in violation of the constitutions of Yugoslavia and the Republic of Serbia, had declared the so-called Republic of Kosovo. The Assembly of the Republic of Serbia had responded by temporarily suspending the Assembly of the Socialist Autonomous Province of Kosovo and adopting a number of other measures designed to protect territorial integrity and constitutional order of the Republic of Serbia. The implementation of those measures had had a somewhat negative impact on the ethnic Albanians in that province and had resulted in abuses. Those guilty of such abuses had been brought to justice and amendments had been proposed by

(Mr. Mitic, Yugoslavia)

the Ministry of Justice of the Republic of Serbia to the relevant regulations and their enforcement rules.

16. With reference to the complaints that several thousand ethnic Albanians had been dismissed from their jobs on the grounds of political activity, he pointed out that those workers had failed to report to work for several weeks for reasons probably due to a political boycott, and he believed that such absence would be considered sufficient reason for dismissal in any country. In view of the large numbers involved, the Government of the Republic of Serbia had initiated a dialogue with the Union of Independent Trade Unions of Kosovo, in order to resolve the problem.

17. The boycott of elections to the Assembly of the Republic of Serbia by the Albanian majority, as well as their refusal to participate in the 1991 census, had ultimately injured the Albanian minority itself. The unsatisfactory situation in Kosovo could only be resolved if two conditions were fulfilled, namely, the holding of democratic and multi-party parliamentary elections to choose deputies from the Autonomous Province of Kosovo and the recognition of the sovereignty and integrity of the Republic of Serbia as the State in which those Albanians lived.

18. The point at issue was whether a national minority had the right to self-determination, including secession, in other words, the right to establish its own State. In accordance with existing international instruments, including those of the Conference on Security and Cooperation in Europe (CSCE), the Governments of Yugoslavia and the Republic of Serbia believed that national minorities did not have the right to self-determination and secession. That right was not recognized by any country in the world and it was therefore unrealistic to expect such recognition from the Governments of Yugoslavia and of Serbia. Furthermore, the majority of the population in the Republic of Serbia strongly opposed the establishment of a new Albanian State in their own territory.

19. The Governments of Yugoslavia and of Serbia were, however, determined to protect the rights enjoyed by minorities under international instruments and were endeavouring, to that end, to establish dialogue with representatives of the political parties representing the ethnic Albanians. He stressed that the question of self-determination of national minorities required a clear answer, since conflicting interpretations of the question could have fatal consequences for Yugoslavia and other countries as well. In the search for a solution, the Governments of Yugoslavia and its constituent republics had received numerous organizations and individuals concerned with issues of human and minority rights, for the purposes of exchanging views and sharing experiences in that field.

Constitutional and legal framework within which the Covenant is implemented; state of emergency and self-determination (articles 1 (1), 2 and 4 of the Covenant) (section I of the list of issues)

20. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Yugoslavia, namely: (a) the effect of the current crisis on the constitutional order in Yugoslavia and on the discharge of Yugoslavia's international obligations to respect and to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant; (b) the status of the amendments to the Federal Constitution adopted since November 1988 and the adoption of new Constitutions for the so-called "federal units"; (c) the observance of article 1 of the Covenant, particularly in view of the adoption of amendments establishing federal units as well as sovereign States which seemed to imply that mutual relations in Yugoslavia must proceed along new lines and that its internationally recognized status had changed, and the new legal system resulting from that redistribution of power; (d) the rights which had been derogated from during the recent events, the reasons why Yugoslavia had not declared a state of emergency and had not followed the notification procedure laid down in article 4, paragraph 3, of the Covenant; (e) the safeguards and remedies available to individuals affected by the recent military operations; (f) the impact of the state of emergency in Kosovo on the exercise of the rights guaranteed by the Covenant, in particular with regard to safeguards and remedies available to individuals; and (g) the ratification of the Optional Protocol, signed by the Government on 14 March 1990.

21. Mr. MITIC (Yugoslavia) said, with reference to section I (a), that the Yugoslav Government was no longer in control of the whole territory of the country. Some of the secessionist republics had been recognized by as many as 60 foreign States, which posed a serious obstacle to the constitutional resolution of the problem. The Yugoslav Government, which respected the right to self-determination and the realities of the situation, was endeavouring to cooperate with those republics in finding a solution to problems of day-to-day existence, which included human rights issues affecting persons on those republics or persons from those republics currently residing in other parts of Yugoslavia. The readiness of the Yugoslav Government to discharge its international obligations was demonstrated by its recognition of guarantees for the World Bank debts of all the republics, including Slovenia and Croatia. Thus, while the Yugoslav Government did not recognize the secession of the breakaway republics, it was prepared to face realities and to seek ways of solving the problem.

22. The question of the independence of Bosnia, Herzegovina and Macedonia should, in accordance with the decision of the European Community, be deferred until after the Conference on Yugoslavia. With reference to section I (b), he said that some of the amendments to the 1988 Constitution had been accepted by all the constituent republics, but about 50 amendments had not been adopted by all the republican Assemblies, and were therefore not yet in force. As there were no representatives of Croatia, Slovenia, Macedonia or Bosnia-Herzegovina in the current national parliament, he doubted whether that goal could now be achieved.

(Mr. Mitic, Yugoslavia)

23. The 1974 Constitution had provided for a single Yugoslav community with many confederative elements. The adoption of decisions had required the consent of all the republics and provinces; that was where conflicts had originated. A new draft Constitution had recently been prepared by a group of experts commissioned by the federal Parliament; according to news reports, it envisaged a close federation along the lines of the Federal Republic of Germany and embodied human rights concepts similar to those followed by France, Italy, the United Kingdom and the United States. The new Constitution would be open for ratification by all republics wishing to remain in the Yugoslav federation.

24. Referring to section I (d), he said that a state of emergency had been declared in Kosovo in 1981 and had been lifted in 1989; in each case, the Secretary-General had been notified. The only other measure involving derogation from the rights guaranteed in the Covenant was a restriction on the right to travel abroad of young men aged 18 to 60 who were liable for military service.

25. With regard to section I (e), the Yugoslav federal army had made efforts to safeguard the rights of individuals. Many instances had been documented of genocidal acts committed by Croatian military and paramilitary units against the Serbian population in Croatia; materials on that subject would be provided to the Committee. His Government was prepared to punish all those responsible for crimes against civilians; some 30 persons had already been detained, and a special commission had recently been established to investigate all reported violations of international humanitarian law, regardless of the nationality of the victims.

26. With regard to section I (f), while judicial remedies offered the best protection, it was not always possible, in a climate of inter-ethnic and inter-religious hatreds, to pursue all individuals suspected of having committed crimes.

27. Turning to section I (g), he said that his Government had submitted to Parliament a proposal to ratify the First Optional Protocol and to make the declaration provided for in article 41 of the Covenant; a decision in that regard was pending.

28. Mr. SERRANO CALDERA said that the situation in Yugoslavia was one of extreme complexity, involving a welter of ethnic, political and judicial issues, the solution to which went beyond merely guaranteeing the rights embodied in the Covenant.

29. His main concern related to the constitutional legal system and the real capacity of the Government to protect civil and political rights. To be sure, such rights were embodied in the federal Constitution; however, the enactments of the sovereign federal units often conflicted with the provisions of the Constitution, as outlined in paragraphs 29 to 33 of the report. He would

(Mr. Serrano Caldera)

therefore appreciate additional information on the real effect of the decisions taken by the Constitutional Court in a situation of civil war such as currently prevailed in the country, and on any measures which had been adopted to protect the rights embodied in the Covenant. Further details should also be provided on the status of the Covenant itself and on whether the new laws promulgated by the federal units contained any references to the Covenant.

30. Mr. HERNDL said that although the federal Constitution endorsed the right of all nations to self-determination, that right was not genuinely observed by the federal Government in respect of the current secessionist tendencies.

31. The issue of self-determination had a bearing on the territorial application of the International Covenants. While the Covenants applied to the entire territory of Yugoslavia, the federal Government was no longer in a position to ensure full compliance with their provisions throughout the country. However, the Government was responsible for the actions of its troops wherever they operated, although it could not be responsible for all acts committed by individuals.

32. Drawing attention to paragraph 4 of the report, he said that it implicitly acknowledged that, prior to the introduction of the new constitutional changes, the protection of the freedoms and rights of citizens had fallen below internationally recognized standards.

33. Mr. Aguilar took the Chair.

34. Mr. FODOR said it was commendable that the State party had prepared and submitted its third periodic report as requested by the Committee, despite the crisis occurring in the country. Nevertheless, the quality of the report was less than satisfactory. The report should have covered the entire reporting period, which should have been broken down into several subperiods. For the first subperiod, from the presentation of the first periodic report in 1983 to the declarations of sovereignty in 1990, the Government should have reported on the practical measures adopted to improve the implementation of the Covenant. In the second subperiod, from the declarations of sovereignty to the outbreak of armed conflict, information should have been provided on the efforts made by the authorities to find peaceful solutions, once Croatia and Slovenia had made clear their determination to attain full independence. With regard to the third subperiod, from June 1991 to January 1992, the Committee had received numerous reports from third parties of extremely grave violations of civil and political rights; however, the State party was mainly silent on those issues and had referred to them only in a general way in paragraphs 82 and 83 of its report. Detailed information should have been provided on the gross violations of articles 6 to 10, 12 and 14 of the Covenant, among others.

(Mr. Fodor)

35. The final subperiod would have been the interval following the introduction of the United Nations-sponsored cease-fire and the report should have contained reference to a strategy designed to achieve a peaceful and lasting solution to the crisis and a prospective constitutional framework for the future implementation of the Covenant.

36. He noted that much of the information contained in the report referred to proposed draft amendments to the federal Constitution. Given that the geographical scope of the Constitution was now severely limited and that its provisions were without effect in a considerable part of the country, he felt that such an approach was highly anachronistic.

37. With regard to article 1 of the Covenant, he noted that the report listed the measures taken by the various federal units to achieve full independence and sovereignty, but failed to mention the autonomous provinces, especially Kosovo, which had made great efforts to exercise the right to self-determination and to establish an independent republic. The parliament of Kosovo had adopted a Constitution and declared the province an independent republic, a measure which had been overwhelmingly endorsed by a popular vote. He also wanted to know what position the Republic of Serbia would adopt regarding the future status of the autonomous provinces of Kosovo and Vojvodina within the new federation and whether their consent would be sought.

38. He noted that, according to paragraph 25 of the report, federal bodies were being prevented from carrying out their tasks and duties related to the implementation of their obligations in the area of the rights and freedoms of citizens. He wondered whether such bodies could still be considered genuine federal organs, or whether they represented only the interests of Serbia and Montenegro.

39. Paragraph 81 of the report appeared to be saying that there was a direct cause and effect relationship between the process of political pluralism and the deterioration in the human rights situation in Yugoslavia. He would welcome clarification of the meaning of that statement.

40. Paragraph 34 of the report maintained that all the measures taken in connection with the state of emergency in Kosovo had been in accordance with the provisions of article 4 of the Covenant. However, article 4 specified that such measures should be taken only during a public emergency, which should be officially proclaimed. In addition, article 317 of the Constitution stipulated that a state of emergency must be declared by the Presidency of the Federal Republic and that rights could be suspended only by a decree with force of law. According to paragraph 36 of the report, however, one of the competent bodies involved in the decision had been the Government of Kosovo. He felt that an explanation was needed. He also wanted to know what rights other than those protected by articles 12 and 21 had been suspended during the declared state of emergency and what rights had been derogated from in practice when no state of emergency was in force in Kosovo.

(Mr. Fodor)

41. Finally, he asked how the Government could reconcile the measures taken against Albanians in Kosovo during the state of emergency - such as the dismissal of teachers and lawyers and the closure of Albanian schools - with the provisions of article 4, paragraph 1, of the Covenant relating to discrimination solely on the ground of race.

42. Mr. Pocar resumed the Chair.

43. Mr. EL-SHAFEI said that the strong desire for secession shown by units of the previous federal State had raised the question of the right to self-determination and whether that right was limited to the national level or could be applied to local or internal situations. It was clear from the report that the viewpoint of the federal Government was that the provisions of the federal Constitution should have been respected and the matter settled between the various political entities of the federation. It felt that the right to self-determination had been exercised in a way that was contrary to the provisions of the Constitution and therefore illegal. Other parties undoubtedly took a different view of the matter.

44. The concern of the Committee, however, was to determine the extent to which the federal Government had observed the rights and freedoms provided for under the Covenant during the events in question. Clearly there had been many breaches and excesses by all parties, but the Committee's concern was with the federal Government of Yugoslavia and its responsibility as a State party to the Covenant, and pertinent questions must therefore be asked. In connection with the use of the federal army to quell the riots in Kosovo, for example, he wanted to know whether the Government had observed all its obligations concerning the use of force and the avoidance of the use of fire-arms other than in exceptional circumstances, and whether it had used its authority to control the actions of the federal army.

45. The third periodic report described a situation which had been overtaken by events, in that certain political entities had been granted recognition by a number of States. According to the representative of Yugoslavia, a new draft Constitution was being drawn up for submission to other political entities interested in joining the new State. He would welcome further information as to what exactly those political entities were.

46. Mr. MAVROMMATIS said that the report was as good as could be expected under the circumstances, given that the federal Government was frequently unaware of what was happening in the areas affected by civil strife.

47. He wanted to know whether the Republics of Croatia and Slovenia had said whether they considered themselves bound by the provisions of international instruments such as the Covenant. He asked for information on the measures taken by the federal Government to protect ethnic and national minorities in Kosovo and in the main cities, and called for more details concerning articles derogated from during the state of emergency.

(Mr. Mavrommatis)

48. He welcomed the investigation of atrocities committed by the Serbian army and paramilitary units but said that it was generally felt that the lack of proper government control over the army had contributed to the deteriorating situation and helped accelerate the disintegration of the country. On occasion, efforts to achieve a cease-fire had been frustrated by the army's failure to comply with government orders. He wanted to know what future measures were planned to keep the army under full control.

49. He failed to understand why a series of notifications had not been given under article 4 of the Covenant in connection with the inter-ethnic fighting in Kosovo and elsewhere. He asked what emergency measures had been taken in Serbia and Montenegro to protect minorities and whether they were still in force.

50. Mr. MÜLLERSON said that, while the Covenant applied to the entire territory of Yugoslavia, the Government of Yugoslavia could protect civil and political rights only in Serbia and Montenegro, since it did not control the rest of the country, either de jure or de facto. In that respect, he wished to know the status of the Covenant in the republics that had chosen to leave the Yugoslav federation and establish independent States. Paragraph 18 of the report indicated that, according to the Constitution, Serbia had actually become a fully independent and sovereign State, and he wished to know whether that meant that Serbia would also separate from Yugoslavia.

51. Mr. WENNERGREN said that, according to paragraphs 16 and 17 of the report, Slovenia and Croatia had seceded from the Yugoslav federation but had not seceded from the federation's legal system. Both Slovenia and Croatia recognized federal laws that were not contrary to their Constitutions. He wondered whether the Covenant would remain in force when Slovenia and Croatia enacted their own laws and the federal laws ceased to have effect in the two Republics. It seemed that, if the Covenant was to continue to have effect in Slovenia and Croatia, they would have to accede to it as separate States parties.

52. Mr. PRADO VALLEJO said that the right to self-determination was inalienable and could not be renounced. Any attempt to prevent it would be a violation of the Covenant. He therefore requested the Yugoslav delegation to clarify paragraph 20 (d) of the report which stated that "the issue of the exercise of the right of nations to self-determination and to secession" concerned "not only one but all the nations within the Socialist Federal Republic of Yugoslavia". That statement was completely contrary to the right to self-determination. Moreover, paragraph 21 stated that "the exercise of the right to self-determination, including the right to secession," could not "be regulated unilaterally by the assemblies of the federal units exercising that right", and he inquired how it was possible to prevent a federal unit from exercising that basic right.

(Mr. Prado Vallejo)

53. He requested the Yugoslav delegation to comment on the effect of the decree suspending the enforcement of individual acts and measures taken pursuant to articles 4 and 10 of the Law on the Plebiscite on the Autonomy and Independence of the Republic of Slovenia, referred to in paragraph 21 (b) of the report.

54. He wished to know what measures the Government of Yugoslavia had taken to ensure that the provisions of the Covenant were being applied in Serbia and Montenegro. The federal armed forces had been accused of blatant violations of human rights, including the right to life, and he wished to know whether any investigatory body had been established to ensure that the army complied with the Covenant. He asked whether any member or members of the armed forces had been found guilty of human rights violations.

55. The Yugoslav delegation should indicate how the Government of Yugoslavia was cooperating to ensure the effectiveness of the cease-fire. Perhaps the delegation would be able to send additional information to the Committee.

56. Mr. SADI said that he assumed that the federal authorities did not deny the right of Croatia and Slovenia to self-determination as long as that right was exercised in accordance with the Constitution. In that regard, he wondered whether the Constitution actually permitted the two Republics to assert their self-determination. The Yugoslav delegation should explain what constituted a minority, which did not have the right to self-determination, and what constituted a people, which did.

57. He was particularly concerned about human rights violations by the federal Government, which should be subject to a higher degree of supervision and should observe higher standards than the breakaway republics. He inquired whether the Government of Yugoslavia was in a position to investigate all of the human rights violations reported by Amnesty International and whether it would be able to provide the Committee with the results of the investigations, which should include information on any measures taken to punish the guilty parties.

The meeting rose at 1 p.m.